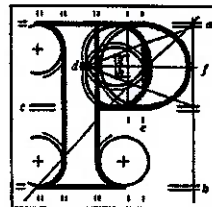


Our Case Number: ABP-309770-21

Planning Authority Reference Number:



**An
Bord
Pleanála**

Jennifer Gallagher
NWTAG
Clonsura
Castletown-Finea
Castlepollard
Co. Westmeath

Date: 24 May 2021

Re: Proposed development of up to 15 wind turbines with a tip height of up to 175 metres and laying of approximately 26km of underground electricity cabling to facilitate the connection to the national grid, and all associated site development works
Townlands of Camagh, Carlanstown, Coole, Clonrobert, Clonsura, Doon, Monktown, Mullagh, Newcastle and other townlands, Co. Westmeath

Dear Sir / Madam,

An Bord Pleanála has received your observation or submission in relation to the case mentioned above and will take it into consideration in its determination of the matter. Please accept this letter as a receipt for the fee of €50 that you have paid.

Please be advised that copies of all submissions / observations received in relation to the application will be made available for public inspection at the offices of the Local Authority and at the offices of An Bord Pleanála when they have been processed by the Board.

For further information on this case please access our website at www.pleanala.ie and input the 6-digit case number into the search box. This number is shown on the top of this letter (for example: 303000).

Yours faithfully,

Eimear Reilly
Administrative Assistant
Direct Line: 01-8737184
BL50A

Tel	Tel	(01) 858 8100
Glaó Áitiúil	LoCall	1890 275 175
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D01 V902	D01 V902



Environmental Management Services

Comhairleoirí Comhshaoil

Environmental and Planning Consultants

An Tinteán Nua, Ballymanus, Castlepollard, County Westmeath

An Tinteán Nua, Baile Mhánais, Baile na gCros, Co. an Iarmhí, N91 PP76.

Telephone [REDACTED] Mobile [REDACTED] E-mail [REDACTED]

Planning application by Coole Wind Farm Limited for a proposed Wind Farm Consisting of up to 15 Wind Turbines in Coole, Monktown, Camagh, Doon, Clonsura and other Townlands; together with a Proposed Grid Connection Route, Borrow Pit and Ancillary Developments in a Number of Adjacent Townlands, County Westmeath

An Bord Pleanála Reference ABP-309770

SUBMISSION BY THE NORTH WESTMEATH TURBINE ACTION GROUP



AN BORD PLEANÁLA	
LDG-	<u>0400.821</u>
ABP-	_____
1 / MAY 2021	
Fee: €	<u>50</u> Type: <u>cash</u>
Time: <u>15:45</u>	By: <u>hand</u>

25 June 2021



Environmental Management Services
Comhairleoirí Comhshaoil
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Planning application by Coole Wind Farm Limited for a proposed Wind Farm Consisting of up to 15 Wind Turbines in Coole, Monkstown, Camagh, Doon, Clonsura and other Townlands; together with a Proposed Grid Connection Route, Borrow Pit and Ancillary Developments in a Number of Adjacent Townlands, County Westmeath

An Bord Pleanála Reference ABP-309770

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Environmental Management Services
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Telephone [REDACTED] Mobile [REDACTED] E-mail [REDACTED]

17 May 2021

The Secretary,
An Bord Pleanála,
64 Marlborough Street,
Dublin,
D01 V902.

Dear Sir,

Planning application by Coole Wind Farm Limited for a proposed Wind Farm Consisting of up to 15 Wind Turbines in Coole, Monkstown, Camagh, Doon, Clonsura and other Townlands; together with a Proposed Grid Connection Route, Borrow Pit and Ancillary Developments in a Number of Adjacent Townlands, County Westmeath

An Bord Pleanála Reference ABP-309770

SUBMISSION BY THE NORTH WESTMEATH TURBINE ACTION GROUP

In response to the above mentioned application by Coole Wind Farm Ltd to An Bord Pleanála for planning permission as 'Strategic Infrastructure Development' (SID, for a proposed wind farm at Coole and adjacent townlands, and for other ancillary developments including a proposed grid connection, borrow pit and road works, the North Westmeath Turbine Action Group (NWTAG) wishes to make a submission to An Bord Pleanála, as permitted by Section 37E of the Planning and Development Act, 2000, as amended.

NWTAG is a locally based unincorporated association, representing the interests of residents, farmers, small business owners and other persons living in and around the area where the proposed wind turbines would be located, if permitted. The group was established in mid-2017 in response to widespread and growing concern following the first of several planning applications made by Coole Wind Farm Ltd for a proposed wind farm and a cable connection to the national grid.

Having examined carefully the planning application now being made to the Board by Coole Wind Farm Ltd, together with a history of planning applications by the same applicant for a wind farm on the subject site, together with a



previous planning application for a proposed grid connection, and taking into account the intensified, current and continuing unauthorised use of a significant portion of the proposed wind farm site for the extraction, milling and removal of peat, NWTAG therefore considered that it was important, for the reasons which we have set out in the attached document, to submit observations to the Board; and the Group has requested Environmental Management Services to prepare the attached document, which, together with this letter, constitute the Group's observations on the applicant's appeal.

The Board will be aware that the North Westmeath Turbine Action Group initiated Judicial Review proceedings against the Board, and that a reserved Judgment has not yet been issued in respect of these proceedings.¹

Additional information about the North Westmeath Turbine Action Group will be found in section 2 of the attached submission, and the address of the group (which may be used by the Board, if necessary, in addition to the address of Environmental Management Services, as Agent) is:

c/o Ms Jennifer Gallagher,
Chairperson, NWTAG.
Clonsura,
Castletown-Finea,
Castlepollard,
County Westmeath.

N91 F201

A payment of € 50.00 is enclosed, in payment of the statutory fee for making an observation to the Board on an SID application; and we look forward to your acknowledgement and statutory fee receipt in due course.

Yours sincerely,

Jack O'Sullivan

**Environmental Management
Services**

Jennifer Gallagher
Chairperson, NWTAG

Caroline Pilkington
Hon. Secretary, NWTAG

¹ (North Westmeath Turbine Action Group & Another -v- An Bord Pleanála & Others, 2019 No 297 JR and 2019 No. 84 COM).



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**Planning application by Coole Wind Farm Limited for a
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Turbines in Coole, Monkton, Camagh, Doon, Clonsura
and other Townlands; together with a Proposed Grid
Connection Route, Borrow Pit and Ancillary
Developments in a Number of Adjacent Townlands,
County Westmeath**

An Bord Pleanála Reference ABP-309770

1. INTRODUCTION

On 22 March 2021, Coole Wind Farm Ltd made an application to An Bord Pleanála (under the 'Strategic Infrastructure Development' section of the Planning and Development Act 2000 as amended) for a proposed wind farm consisting of up to fifteen wind turbines in Coole, Monkton, Camagh, Doon, Clonsura and other townlands listed in the planning application, including an electrical substation, access roads, borrow pit, underground cables, construction of a link road, tree felling, temporary construction compound and ancillary developments, together with a proposed grid connection route to an existing 110kV electricity sub-station in Irishtown, Mullingar, along rural roads and through a number of adjacent townlands in County Westmeath (An Bord Pleanála case reference **ABP-309770**).

This is not the first planning application made by this applicant for the same, or very similar, wind farm development on the same site, and the Board may be aware of the first such application, made on 08 June 2017 (Westmeath County Council Planning Reference 17 / 6177), which attracted submissions from An Taisce, and the North Westmeath Turbine Action Group (NWTAG) (see section 2 below). On 03 August 2017, Westmeath County Council issued a detailed request for further information; the planning application was withdrawn on 06



October 2017; and a second application for a 13-turbine wind farm was made on 20 October 2017 (Westmeath County Council Planning Reference 17 / 6292).

This application also attracted a large number of submissions; and, on 12 December 2017, Westmeath County Council decided to refuse planning permission for the proposed wind farm. On 16 January 2018, Coole Windfarm Ltd submitted a first party appeal to An Bord Pleanála (Board's case reference ABP-300686-18); the North Westmeath Turbine Action Group submitted detailed observations on the appeal; and, on 26 March 2019, the Board decided to grant planning permission.

Having taken legal advice, the North Westmeath Turbine Action Group initiated Judicial Review proceedings against An Bord Pleanála in May 2019; the case was heard in the High Court in early March 2020, and Judgment is currently awaited.

During the fourteen months since the High Court hearing, Coole Wind Farm Ltd made a further planning application for a grid connection and a Section 5 reference to Westmeath County Council; and we will describe these in section 3 below.

There is a significant number of other planning, administrative and legal issues connected with the current planning application, and we will address these where relevant in subsequent sections of this submission.

A further layer of complexity, which we suggest the Board must take into account, derives from the site of the planning application – the location of some of the proposed wind turbines – on an extensive area of bogland from which peat has been removed without either planning permission being granted by Westmeath County Council or a licence from the Environmental Protection Agency. These are issues which we will also address in our submission.



2. THE NORTH WESTMEATH TURBINE ACTION GROUP

The North Westmeath Turbine Action Group (NWTAG) was established during the summer of 2017 in response to the first planning application by Coole Wind Farm Ltd on 08 June 2017 (Westmeath County Council Planning Reference 17/6177).

Previous widespread concern about large or industrial-scale wind turbines had resulted from plans announced by Element Power and Mainstream Renewable Power in 2012 and 2013 to erect more than one thousand wind turbines across the midlands of Ireland to export power to Britain via two subsea cables to Wales, in order to assist Britain to meet its legally binding renewable energy targets (the "Greenwire" project, a project which the Board should be aware is still being considered by the Government in 2021). The connection between the current planning application and other planning applications for wind farms by Element Power was thoroughly addressed in the High Court last year (section 3.5 below).

Public anxiety and anger had been further aroused by the manner in which the Irish and British governments had come to an agreement, without any real public consultation, to allow power to be traded between both countries, with the result that people living in the midlands became increasingly aware of the problems which would result from such intensification of industrial-scale wind farms across five or six counties. In 2014, the inter-governmental agreement was shelved as a result of widespread campaigning by local communities, but the possibility remained that planning applications might still be made on a piecemeal basis.

Concern around the Coole area and other nearby townlands in north Westmeath at first led to the coming together of a relatively informal group comprised of members from two existing wind information groups based in Coole and Fore, with the addition of other concerned members of the local community. When it became known that Coole Wind Farm Ltd was a subsidiary of Element Power Ltd, concern grew rapidly, and well-attended meetings were initially held in Castlepollard on 03 and 31 July 2017. At the latter meeting it was agreed that a new group would be established, to be named the North Westmeath Turbine Action Group (NWTAG).

In July 2017, approximately 130 submissions were made to Westmeath County Council by members of NWTAG and others, and nearly all of these submissions opposed the planned wind farm. When the first planning application was withdrawn, and a second planning application was made to Westmeath County Council by Coole Wind Farm Ltd. on 20 October 2017 (Westmeath County Council Planning Reference 17/6292), this again attracted more than 100 submissions from locally based members of the public.



When Westmeath County Council made a decision to refuse planning permission, the applicant responded by lodging with An Bord Pleanála on 16 January 2018 a First Party Appeal (Reference ABP-300686-18) which made serious allegations against the Council's decision-making process, and which criticised the Councillors in the exercise of their reserved powers.

On 12 February 2018, the NWTAG submitted to the Board lengthy and detailed observations on the applicant's appeal; and, when the Board decided on 26 March 2019 to grant planning permission for the proposed wind farm, members of the NWTAG studied carefully the Board's decision, the Inspector's report and the details of the application. On legal advice, NWTAG initiated Judicial Review proceedings against An Bord Pleanála in May 2019; the case was heard in the High Court in early March 2020, and Judgment is currently awaited.¹

On 22 May 2020, Coole Wind Farm Ltd., applied to Westmeath County Council for a ten-year planning permission for the works required to connect the wind farm to the national grid at an existing electricity substation near Mullingar (Planning reference 20/6121). On 24 June 2020, NWTAG submitted to the planning authority an objection against the proposed grid connection; and, at the same time challenged in the High Court the decision by Westmeath County Council to accept the application as valid. NWTAG was granted leave, and the planning application was withdrawn by Coole Wind Farm Ltd on 30 July 2020.

In June 2020, NWTAG submitted observations on the draft Westmeath County Development Plan, supporting the elected members' policy of distancing wind turbines from inhabited houses; this policy was the subject much discussion; and the Office of the Planning Regulator issued a direction to Westmeath County to remove the policy; the Councillors decided not to change the policy, and on 29 April 2021, the Minister of State for Local Government and Planning issued a draft Ministerial Direction, requiring the policy to be removed.

It will therefore be clear to the Board that the North Westmeath Turbine Action Group has been consistently engaged in the planning process for the Coole Wind Farm (in its various forms), and has exercised the right of citizens to participate in this process, for the benefit of the environment and the local community.

The aims of NWTAG are:

- i) to examine the effects of the proposed Coole Wind Farm on local amenities, wildlife, landscape, public health and other areas of concern;
- ii) to share and communicate information about the effects of the proposed Coole Wind Farm among members and people living locally;

¹ (North Westmeath Turbine Action Group & Another -v- An Bord Pleanála & Others, 2019 No 297 JR and 2019 No. 84 COM)



- iii) to inform the local community of what is being proposed by the applicant, Coole Wind Farm Ltd., and the implications for the locality and its residents;
- iv) to engage in the planning process, in opposition to the proposal by Coole Wind Farm and by its parent company, Statkraft Ireland Ltd, to construct a large-scale industrial wind farm on the proposed site in North Westmeath;
- v) to further continue this engagement, if it proves necessary to do so through the Courts, by considering and taking legal advice on any decision by An Bord Pleanála to grant planning permission for the proposed wind farm;
- vi) to ensure that any further planning applications for large-scale wind farms in County Westmeath will respect the integrity of the landscape, take account of the wishes of local residents as expressed through their elected representatives, do not damage other sources of livelihood such as farming, tourism and the equine industry, do not damage the environment or wildlife, and do not put public health at risk; and,
- vii) to campaign for the introduction of more appropriate national legislation and guidelines for wind energy, which would favour small producers, especially community groups, while providing clearer guidance for the siting of large wind farms; and which would apply not only to North Westmeath but to the country as a whole.

In support of these objectives, NWTAG has held a large number of information days, assisted people with their submissions, engaged with local politicians, generated publicity, facilitated public meetings and raised funds. It has been agreed that this work will continue, in order to preserve what is considered of value in the County, while allowing and encouraging community-based and innovative renewable energy projects.

The North Westmeath Turbine Action Group has approximately 80 members, some 12 of whom are active in developing the organisation, with a board of 5 members. Committee meetings are held regularly, with an average attendance of 10 to 12 people; and larger meetings have been held on several occasions, allowing a broader group of members to express their views and concerns. At these larger meetings, attendances have ranged from 30 to 80, and at a recent large group meeting, some 45 to 50 people attended.

During the Covid-19 virus epidemic, committee meetings continued to be held, using Zoom as a platform for communication, which enabled social distancing to be maintained.

Membership reflects the wide range of people living in the local community from all walks of life, denominations and backgrounds, including a number of locally-



based experts in different fields such as archaeology, local history, cultural and natural heritage, planning and environmental sciences; and therefore NWTAG may be fairly described as being broadly representative of the local community.

The board members (officers) are:

Chairperson: Jennifer Gallagher

Vice Chair: Cariosa Fagan

Hon. Secretary: Caroline Pilkington

Hon. Treasurer: Clarissa Delamere

The address of the North Westmeath Turbine Action Group is:

c/o Ms Jennifer Gallagher,

Clonsura,

Castletown-Finea,

Castlepollard,

County Westmeath.



3. PLANNING HISTORY AND BACKGROUND TO THE CURRENT APPLICATION

In section 1 above, we mentioned briefly that the current planning application had been preceded by a sequence of events, some of which were administrative (applications, appeals and submissions) while others were legal, as the Board will be aware. In order to provide the necessary context for our submission on the current application, we will briefly review this sequence.

The applicant, in section 2.5 of the EIAR, dated March 2021, also provides some details of earlier planning applications by Coole Wind Farm, but we consider that this account is incomplete.

3.1 The Earliest Planning Applications in 2017

On 08 June 2017, Coole Wind Farm Limited, which at that time was a subsidiary of Element Power Ireland Ltd., based at Cork Airport Business Park, and established on 04 October 2016, submitted a planning application to Westmeath County Council for a proposed wind farm consisting of up to 13 wind turbines with a height of 175 metres (Westmeath County Council Planning Reference 17 / 6177).

Planning permission was also sought for all associated foundations, hardstanding areas, internal site roads and other developments including:

- i) an on-site electrical substation;
- ii) a temporary construction compound;
- iii) underground electrical and communications cabling connecting the turbines to the proposed on-site substation;
- iv) construction of new site access roads, upgrading of existing access tracks and the associated drainage works;
- v) excavation of a borrow pit;
- vi) construction of a link road between the R395 and R396 Regional Roads to facilitate turbine delivery;
- vi) road works to facilitate delivery of large turbine components, including surfacing at the junction of the N4 and L1927 roads in the townland of Joanstown, and widening of the L1927 and L5828 junction in the townland of Boherquill; and,
- vii) all other associated site development works.

This first planning application attracted a large number of objections, including from An Taisce, and the North Westmeath Turbine Action Group (NWTAG); and,



on 03 August 2017, Westmeath County Council issued a 12-page detailed request for further information, under some 53 headings.

Given the detail of the Council's request for further information (FI), it was not surprising that Coole Wind Farm withdrew the planning application (on 06 October 2017). However, a second planning application soon followed, also for a 13-turbine wind farm on the same subject site, on 20 October 2017 (Westmeath County Council Planning Reference **17 / 6292**).

Despite the detailed FI request, the applicant made very few changes to the proposed development, though one important addition was a further reference in the applicant's EIS to ongoing peat extraction works at the proposed site; and, in order to ensure interaction between these works and the construction and operation of the wind farm at the proposed site, an Interactions Management Group (IMG) would be set up if planning permission were to be granted. A new section 1.3.1 in the applicant's EIS described the key role of the IMG as to establish an interface between the construction and operation of the wind farm and the continuing peat-extraction activities at the application site, and to provide a co-ordinated approach to the management of site works, given the interactions between the two activities,

The second planning application also attracted a large number of submissions, including detailed observations by Inland Fisheries Ireland, by the Development Applications Unit of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs, by the Environmental Health Department of the Health Service Executive, by An Taisce (Dublin office and County Westmeath Association), by the North Westmeath Turbine Action Group, and by many local residents.

3.2 Decision by Westmeath County Council to Refuse Planning Permission

On 12 December 2017, Westmeath County Council decided to refuse planning permission for the proposed wind farm, for the single reason that the wind farm *"would materially contravene Policy P-WIN6 of the Westmeath County Development Plan 2014-2020 and would, therefore, be contrary to the proper planning and sustainable development of the area"*.

This policy (P-WIN6) is key to understanding many of the subsequent events up to the present time, and we will examine it in more detail in a further section of this document.

3.3 The Applicant's Appeal

On 16 January 2018, Coole Wind Farm Ltd, through the company's agent, McCarthy Keville O'Sullivan, submitted a First Party Appeal to An Bord Pleanála (Board's case reference **ABP-300686-18**).



By any standards, this was a very unusual appeal, focusing almost entirely on Westmeath County Council's single reason for refusing planning permission, namely, conflict with Variation Number 2 of the Westmeath County Development Plan 2014-2020. The applicant's first party appeal challenged the legitimacy of that variation, and emphasised its alleged damaging effects on the wind farming industry and on Ireland's renewable energy policy and targets.

Variation Number 2 introduced policy P-WIN6 into the County Development Plan on 19 May 2017, and this policy is variously described or remarked upon in the applicant's appeal as:

"inappropriate and contrary to national guidance and Government policy";²

"instigated by the Members of Westmeath County Council, and the proceedings were not started or supported by the Planning Officials within the Council";³

"nor justified on any scientific basis";⁴

"the Members of Westmeath County Council acted 'ultra vires' of their statutory powers" and the Variation No. 2 is "legally unsound";⁵

"Westmeath have turned their back on the carbon saving agenda and completely contradicted their own development plan objectives and policies";⁶

"Policy P-WIN 6 stands in clear contravention to the balance of the Development Plan";⁷

"the Planning Authority's decision to refuse dated 12 December 2017 was due to a failure to comply with a single dubious policy within the County Development Plan";⁸

"Policy P-WIN 6 which stand apart from the remainder of the plan and which materially contravenes national policy and the ability to provide for

² Coole Windfarm First Party Grounds of Appeal; Section 1.3, page 3. McCarthy Keville O'Sullivan Ltd, 16 January 2018.

³ Coole Windfarm First Party Grounds of Appeal; Section 3.6, page 17. McCarthy Keville O'Sullivan Ltd, 16 January 2018.

⁴ *Ibid.*

⁵ *ibid.*

⁶ Coole Windfarm First Party Grounds of Appeal; Section 3.6, page 19. McCarthy Keville O'Sullivan Ltd, 16 January 2018.

⁷ Coole Windfarm First Party Grounds of Appeal; Section 5.3, page 35. McCarthy Keville O'Sullivan Ltd, 16 January 2018.

⁸ Coole Windfarm First Party Grounds of Appeal; Section 5.3.3, page 38. McCarthy Keville O'Sullivan Ltd, 16 January 2018.



the proper planning and sustainable development of Wind Energy proposals throughout the functional area of Westmeath”;⁹

“if the Policy P-WIN 6 is applied it will entirely preclude wind energy development of any significant scale”,¹⁰ [applicant’s emphasis];

*“Policy P-WIN 6 [was] introduced without: a) any evidence base, b) any landscape character assessment, c) any assessment of its impact on renewable energy development, d) in the full knowledge that it profoundly contradicts the Wind Energy Guidelines 2006, and e) as a crude mechanism to simply prevent wind farm development in the County”*¹¹ [our emphasis added], and;

“Policy P-WIN 6 is clearly, obviously and unequivocally contrary to current national and regional guidance and the balance of the Development Plan”.¹²

The above quoted statements constituted seriously negative and repetitive criticisms of Westmeath County Council’s policy on large-scale wind farming; and the appeal also unfairly criticised the manner in which Variation No. 2 was adopted by the Councillors who were accused of having failed to obey the instructions of the County’s Chief Executive. There was no suggestion or any awareness by the appellant that the Councillors acted democratically, which they are entitled to do, even if the consequences of that decision might adversely affect the business of an applicant for planning permission.

Instead, the elected members of Westmeath County Council are credited with adopting a variation of the County Development Plan for no other reason than to provide them with *“a crude mechanism to simply prevent wind farm development in the County”*, as quoted above from the applicant’s appeal; while the effects of the variation would be to *“entirely preclude wind energy development of any significant scale”* (also quoted above); and, it is suggested and implied, the variation will have the effect of placing Ireland *“in real danger of missing its 2020 RES-E target”*.¹³

Furthermore, the decision by the Planning Authority to refuse permission for the proposed wind farm will *“rule out [the] use of a nationally important land resource*

⁹ *Ibid.*

¹⁰ Coole Windfarm First Party Grounds of Appeal; Section 5.3.3, page 44. McCarthy Kevin O’Sullivan Ltd, 16 January 2018.

¹¹ *Ibid.*

¹² Coole Windfarm First Party Grounds of Appeal; Section 5.3.3, page 46. McCarthy Kevin O’Sullivan Ltd, 16 January 2018.

¹³ Coole Windfarm First Party Grounds of Appeal; Section 5.3.3, page 40. McCarthy Kevin O’Sullivan Ltd, 16 January 2018.



*for the production of wind energy” and will have “the effect of sterilising the County for wind energy development”.*¹⁴

It was clear that the appeal by Coole Wind Farm Ltd made very strong and unfair criticisms of the elected members of Westmeath County Council, implying motives to them which were almost certainly inaccurate and misleading. It would be more correct to state that the elected members of the Council, when discussing and adopting Variation No. 2, which incorporated policy P-WIN6 into the County Development Plan 2014-2020, which was current at that time, were acting in the interests of those persons who democratically elected them, and were concerned to protect the environment, residential amenities, livelihoods and public health of their constituents.

The requirements of wind energy policy P-WIN6 have been carried forward into the current draft Westmeath County Development Plan 2021-2027 as policy CPO 10.132, and it is our submission that the Board must have regard to this policy. This is an important matter which we will address further in this submission.

3.4 Decision by An Bord Pleanála to Grant Planning Permission for the Wind Farm

On 12 February 2018, Environmental Management Services, as agent for the North Westmeath Turbine Action Group submitted to An Bord Pleanála lengthy and detailed observations on the applicant's appeal; overall, some 37 observations were submitted to the Board by local residents, community and business groups, a local primary school Parents Association, local businesses and residents of the wider area, including neighbouring counties (Board's case reference ABP-300686-18).

The appeal was first considered by the Board's Inspector, Mr Colm McLoughlin, who prepared a lengthy report of some 166 pages, dated 20 December 2018, in which he summarised very adequately (in 12 pages) the observations made by the North Westmeath Turbine Action Group and other observers.

He also carried out a Stage 2 Appropriate Assessment, and concluded that he was satisfied that the proposed development, individually or in combination with other plans or projects would not adversely affect the integrity of any European site, in view of these sites' Conservation Objectives.

The Inspector also determined that a future connection to the national grid did not form part of the planning application being considered by the Board, even though a grid connection “option” was described in the application, with the preferred route to be based on possible ESB or Eirgrid requirements. He also

¹⁴ Coole Windfarm First Party Grounds of Appeal; Section 5.3.3, page 41. McCarthy Keville O'Sullivan Ltd, 16 January 2018.



noted that the Roads Design Office of the Planning Authority and Transport Infrastructure Ireland had advised that the proposed grid connection route may ultimately need to be realigned as part of the proposed N4 Mullingar to Longford (Roosky) road scheme. Yet, despite these uncertainties, the Inspector concluded that he was satisfied that the detail of the proposed grid connection provided in the planning application was sufficient to enable the Board to assess the environmental impacts which might be caused by it.

The Board's Inspector therefore recommended that:

"Having regard to the documentation on file, the observations and submissions received, the site inspections and the assessment above, I recommend that permission for the above described development be granted, subject to conditions, for the following reasons and considerations".

Some 20 conditions were recommended in the Inspector's report.

The Inspector's conclusion and recommendations were accepted by the Board; and, on 26 March 2019 An Bord Pleanála made an order granting planning permission for the proposed wind farm, subject to 19 conditions.

There is no need for us to go into any further detail about this decision by the Board, for the reasons that:

- i) the complete file is available to the Board;
- ii) the decision relates to the previous wind farm application, which was for a 13-turbine wind farm, though on the same subject site; and,
- iii) the Board's decision is the subject of Judicial Review proceedings which have not yet been determined at the time of writing this submission.

3.5 Judicial Review Proceedings

The North Westmeath Turbine Action Group carefully considered the Board's reasons for granting permission; and, taking into account the reasons advanced in our observations on the applicant's appeal, other reasons including an assessment of recent cases taken in the High Court against decisions by the Board to grant planning permission for other wind farms, and having taken legal advice, decided to launch Judicial Review proceedings against the Board.

Judicial Review proceedings were initiated on 20 May 2019 (*North Westmeath Turbine Action Group & Another -v- An Bord Pleanála & Others, 2019 No 297 JR and 2019 No. 84 COM*); leave to proceed to the substantive hearing of the case was granted by Mr Justice Noonan in the High Court on 27 May 2019, and the



proceedings were entered into the Commercial Court on 08 July 2019 by Order of Mr Justice Haughton.

The Judicial Review case was heard by Mr Justice Quinn in the High Court on 04 and 05 March 2020, with an agreed further day for hearing on 16 March which was substituted by an exchange of legal submissions as directed by the Court on that day.

When this submission to An Bord Pleanála was being completed for submission (on 14 May 2021), the Judgement of the High Court had not been delivered, and is therefore still awaited.

While we cannot predict the Judgment of the High Court, and the case relates to the previous planning application for a 13-turbine wind farm, and not to this SID application for a 15-turbine wind farm, it is our submission that the Board must consider the following possibilities when determining the current planning application:

- (a) no Judgment will have been delivered by the time the Board is statutorily required to determine the planning application for the proposed 15-turbine wind farm;
- (b) the Judgment of the High Court will have quashed the decision by An Bord Pleanála to grant planning permission for the previously proposed 13-turbine Coole Wind Farm, and that particular wind farm must therefore be considered as "not permitted"; or,
- (c) the High Court will have refused the Judicial Review application by the North Westmeath Turbine Action Group, the Board's previous decision remains in effect, and the previously proposed 13-turbine Coole Wind Farm will have therefore been validly granted planning permission.

Scenario (b) above may also result in several possible outcomes:

- (d) The High Court may find that the illegality of the determination by the Board is such that the original planning application by Coole Wind Farm Ltd for the previously proposed 13-turbine wind farm is quashed, i.e., the slate is wiped clean; or,
- (e) The High Court, while quashing the decision by the Board, may remit the matter back to An Bord Pleanála for a fresh determination of the earlier planning application, requiring the Board to determine the planning application in accordance with law as interpreted in the Judgment of the Court and on the basis of a Ruling made by the Court; and,



- (f) Subsequent to either (d) or (e) above, An Bord Pleanála may appeal to the Court of Appeal (or may make an application directly to the Supreme Court), challenging the High Court's determination; and,
- (g) The Court of Appeal or the Supreme Court, having considered the appeal, may either (h) dismiss the Board's appeal and agree with the High Court's determination of the matter; or,
- (j) The Court of Appeal or the Supreme Court may disagree with, and set aside, the Judgment of the High Court, in which case the Board's determination of the planning application for the previously proposed 13-turbine wind farm stands, and the wind farm must be considered as having been granted planning permission in accordance with law, an outcome similar to (c) above; and, finally,
- k) Coole Wind Farm Limited may decide to withdraw its appeal to the Board against the decision by Westmeath County Council to refuse planning permission, and may then withdraw the planning application. While this may be consider an unusual step, there may be reasons for it.

A final point to note is that in the current planning application to the Board, Coole Wind Farm Limited describes the previously proposed 13-turbine wind farm as "permitted", a statement which is obviously incorrect.

3.6 Request by Coole Wind Farm Ltd to An Bord Pleanála for a Direction on whether the Proposed Grid Connection should be Considered as Strategic Infrastructure

Perhaps because of the difficulty experienced throughout the planning process for the proposed wind farm, Coole Wind Farm Ltd made a request to An Bord Pleanála to determine whether or not the proposed grid connection should be considered as strategic infrastructure, which would allow the applicant to lodge the necessary planning application directly with the Board.

On 28 June 2019, Coole Wind Farm's parent company, Statkraft Ireland Limited, made a request to An Bord Pleanála to enter into pre-application consultations under Section 182E of the Planning and Development Act 2000, as amended, in relation to the proposed cable connection between the "permitted" Coole wind farm site and an existing Mullingar 110kV substation at Irishtown, Mullingar (Board's case reference ABP-304794-19).

The site of the proposed grid connection was inspected on 24 October 2019, and the Board's representatives met with the prospective applicant and its agent on 30 October 2019. The Board's Inspector recommended that the proposed grid connection did not fall within the scope of section 182A of the Planning and



Development Act 2000, as amended, and that a planning application should be made in the first instance to Westmeath County Council.

The Board agreed that the proposed grid connection did not constitute strategic infrastructure; and, on 16 January 2020, issued an Order to that effect.

3.7 Planning Application to Westmeath County Council for a Connection to the National Grid

On 22 May 2020, Coole Wind Farm Ltd submitted to Westmeath County Council a planning application for a ten-year planning permission for the works required to connect what is described as "*the permitted Coole wind farm*" to the national grid at the existing Mullingar 110kV electricity substation at Irishtown, near Mullingar (planning reference **20 / 6121**).

The planning application sought permission for:

- i) upgrading, reorientation and expansion of what is described in the application as "*the previously permitted electricity substation*" in the townland of Camagh, for which planning permission was granted as part of the proposed Coole Wind Farm (Westmeath County Council Planning Reference **17/6292**; An Bord Pleanála Ref. **PL25M/300686**);
- ii) the laying of an underground cable predominantly along the public road corridor to facilitate the connection to the national grid of the "permitted" wind farm, along a route measuring approximately 26.4 kilometres, between the proposed substation in the townland of Camagh, and the existing Mullingar 110kV substation in the townland of Irishtown;
- iii) works to complete the cable connection to the existing Mullingar 110kV electricity substation, including the construction of a dedicated bay within the existing substation compound in the townland of Irishtown; and,
- iv) All associated site works and ancillary developments.

As the Board will be aware, in connection with the current planning application, a grid connection was a necessary component of the previously proposed Coole Wind Farm which, without a grid connection, it would be unable to operate; and the grid connection by itself would also be a worthless asset.

This planning application also attracted a number of submissions and objections, including a lengthy and detailed submission by the North Westmeath Turbine Action Group (25 June 2020), prepared by the group's agent, Environmental Management Services.



One of the principal points made in that submission was that, until a definitive and firm route for the proposed grid connection had been established and agreed with ESB Networks (Distribution System Operator) and with Eirgrid (the Transmission System Operator), the planning application for the proposed grid connection could not be subjected to either appropriate assessment or environmental impact assessment by the planning authority.

The separate planning application for a connection to the national grid was therefore a clear example of project splitting, i.e., the entire project had not been submitted for the Planning Authority's consent when the planning application for the wind farm was lodged, and the final project details were not at that time available to Westmeath County Council.

Even though the applicant had stated that the proposed grid connection cable route would be along existing public road corridors, it was not clear from the details provided if additional privately owned land would be needed at certain points where the road width is inadequate or where engineering concerns require excavation in lands not under the ownership or control of the Planning Authority.

3.8 Judicial Review Proceedings against Westmeath County Council

The planning application briefly described in section 3.6 above was accepted by Westmeath County Council on 03 June 2020 as a valid application in accordance with Article 26 of the Planning and Development Regulations 2001 (S.I. No. 600 of 2001), as substituted by Article 48 of the European Union (Planning and Development) (Environmental Impact Assessment) Regulations 2018 (S.I. No. 296 of 2018).

On 25 June 2020, the North Westmeath Turbine Action Group initiated Judicial Review proceedings against Westmeath County Council for making that decision, i.e., challenging the decision by the planning authority to accept the application as valid (*North Westmeath Turbine Action Group & North Westmeath Turbine Action Group CLG -v- Westmeath County Council, Ireland and the Attorney General, 2020 No. 426 JR*). An application for leave was granted by Mr Justice Meenan on 29 June 2020, and the case was heard on 17 July 2020 by Mr. Justice Richard Humphreys, with an amended statement of grounds being permitted.

The case was unusual in that the applicant (NWTAG) sought to stop the wind farm at an early stage in the planning process, rather than waiting until a decision would be made by the planning authority, or by the Board on appeal. The general principle, as stated by Mr. Justice Humphreys in his Judgment delivered on 22 October 2020, was:

"The general principle must be that a process should be allowed to proceed and that all steps can be challenged at the end. Any other rule



would encourage multiple judicial reviews and unnecessary expenditure of court time on a premature basis” (Judgment, at para 10).

Mr. Justice Humphreys also considered that his view was:

“ ... that the applicants could have waited for the outcome of the planning process and did not need to challenge the acceptance of the permission as valid at the outset. Waiting until the end of the process would not mean that they lost the point, and it could have been included perfectly legitimately in a judicial review of an overall decision with which they were unhappy. But in fact the respondents and notice party haven’t in fact objected to leave” (Judgment, at para 14).

The Court then made an Order “to grant leave in principle subject to the submission of a draft amended statement of grounds”, but refusing to grant a stay on the planning process, which should be allowed to proceed (Judgment, at paras 24 and 27).

While the next stage in the Judicial Review proceedings would have been for the case to go forward to a full hearing, a Further Information Request (FIR) was issued by Westmeath County Council on 17 July 2020, and the planning application was withdrawn by the applicant, Coole Wind Farm Limited. It may be worth noting that the Court was aware of the applicant’s decision to withdraw the planning application, as the Judgment states, at para 8:

“Subsequent developments in relation to withdrawal of the planning permission have since overtaken the proceedings”.

3.9 Further Information Request by Westmeath County Council and Withdrawal of the Application for a Connection to the National Grid

The Further Information Request (FIR) issued by Westmeath County Council on 17 July 2020 was extremely detailed, and raised many concerns about the proposed grid connection and the applicant’s Environmental Impact Assessment report (EIAR) and Natura Impact Statement (NIS). A copy of that FIR is included in Appendix 2-1 of the EIAR accompanying the current planning application to An Bord Pleanála.

Shortly after that letter was issued by the Board, and shortly after the High Court granted leave for the Judicial Review proceedings described in section 3.8 above, Coole Wind Farm Limited wrote to Westmeath County Council on 30 July 2020, withdrawing the planning application for the grid connection and upgrading of the electricity substation.



4. THE SITE AND LOCATION OF THE PROPOSED WIND FARM, UNAUTHORISED USE OF THE SUBJECT SITE FOR PEAT EXTRACTION AND REMOVAL, AND THE CONNECTION BETWEEN PROPOSED WIND FARM AND THIS UNAUTHORISED USE

In section 1 above, we submitted that the Board must take into account certain issues related to the site of the planning application – the location of some of the proposed wind turbines – on an extensive area of bogland from which peat has been removed, and peat removal is continuing, without either planning permission being granted by Westmeath County Council or a licence from the Environmental Protection Agency.

4.1 The Proposed Wind Farm Site

The proposed Wind Farm Site is located approximately 2.4 km north of Coole village and 3.5 km south of the town of Finea (distance from the proposed wind farm site boundary). The town of Castlepollard is located approximately 6.7 kilometres southeast of the wind farm site boundary, at its nearest point. Three separate, but adjacent, peat basins form the proposed wind farm site, and these are all located to the east of the Inny River.

The majority of the wind farm site (in which would be located turbines numbered locations T1 to T4 and T6 to T13) is situated on cut-over peat, and the elevation of the site ranges between approximately 60m OD and 66m OD. Lough Bane, a proposed National Heritage Area (pNHA) is located immediately northeast of the proposed wind farm site. The site is partially bound by the Inny River to the west, agricultural land to the south and east, and coniferous forestry and a peat bog to the north. The River Gloire intersects the northern section of the Wind Farm Site as it flows from southeast to northwest.¹⁵

A similar, but more comprehensive, description of the proposed development site is given in the report by the Board's Inspector who considered the appeal against the decision by Westmeath County Council to refuse planning permission for the previously proposed 13-turbine wind farm (see section 3.4 above; Board's case reference ABP-300686-18).

The Board's Inspector stated that:

"The appeal site comprises five parcels of land in the northwest of County Westmeath, close to the boundary with County Longford. The largest of

¹⁵ This brief site description of the proposed wind farm site is adapted from section 8.3.1.1 of Chapter 8 of the applicant's EIAR.



these parcels is irregular in shape and would contain the proposed wind farm turbines. In addition, the application site includes a parcel of land proposed to accommodate a borrow pit for the development, located approximately 1.1km to the southeast of the wind farm site. The three other parcels of land would accommodate works to the haulage route to facilitate the proposed development, at locations between 1.6km and 10.7km to the south and southwest of the wind farm site. The immediate surrounding settlement pattern is characterised by rural villages and one-off rural housing dispersed along the local and regional road network. The landscape is defined by a mix of pastoral fields, cutaway bog, commercial peatlands and commercial forestry.

*The main body of the site proposed to accommodate the wind farm is located adjoining and to the northeast of the R396 regional road, which connects Coole village with Granard, and to the southwest of the R394 regional road, which connects Finnea village with Castlepollard. It is stated to measure 439ha and **much of the site is presently in use as commercial peatlands** [our emphasis], alongside fringe areas of commercial forestry (measuring c.9.5ha). ... The village of Coole, the nearest identifiable settlement to the proposed wind farm site, is located approximately 2.5km to the south. The largest settlements in the vicinity include Abbeylara, located approximately 5.5km to the northwest, Castlepollard, located 7.4km to the southeast, Granard, located 8.1km to the northwest and Edgeworthstown, located 14.2km to the west".¹⁶*

We would ask the Board to note that, while the applicant's previous planning application and appeal, and the report by the Board's Inspector quoted above, mentioned the on-going extraction of peat from the proposed wind farm site, **the current EIAR and other documents supporting the current planning application do not refer to the impact of the ongoing peat extraction activity on the site.**

What is even more surprising, and we submit that this should be noted by the Board, is that the applicant's EIAR does not take into account the cumulative impacts of peat extraction and the construction and operation of the proposed wind farm. Section 8.5.5 states that:

"Due to the localised nature of the proposed construction works which will largely be kept within the Wind Farm Site/Grid Connection Route (aside from minor junction improvement works and ancillary works), there is no potential for significant cumulative effects in-combination with other local

¹⁶ Report by Mr Colm McLoughlin, Planning Inspector, An Bord Pleanála, dated 20 December 2018; paragraphs 1.1 and 1.2 (Board's case reference ABP-300686-18).



developments on the land, soils and geology environment outside of the proposed Wind Farm Site and Grid Connection Route boundaries”.¹⁷

The same avoidance of any reference to the ongoing peat extraction, milling and peat removal is written into Chapter 15 – Interactions – in which there is no mention of the impacts of peat extraction.

We will return to this issue later, when we come to examine the relationship between the extraction and milling of peat, and the construction and operation of the proposed wind farm.

4.2 Rivers, Streams and Drains within and adjacent to the proposed Wind Farm Site

The River Inny, which marks the county boundary between Counties Longford and Westmeath, forms the western boundary of the major part of the site, while the River Glore, a tributary of the Inny, flows through the site. The River Glore is an important spawning and nursery river for brown trout with significant numbers of Lough Sheelin trout coming to this river to spawn. It rises approximately 6km east of Castlepollard, and flows northwest over a distance of approximately 12.3km. Lough Glore is a small waterbody of some 0.24km² in area, located in the upper part of the Glore sub-catchment.

Two other small rivers flow through the site, the Monktown and Mayne, which are tributaries of the River Glore. The Monktown Stream is a 2nd order watercourse with a channel length of around 4.6km; it drains a portion of the proposed site, and it flows into the River Glore from the south, at a point approximately 1.8km upstream of where the River Glore joins the River Inny.

The Mayne and Monktown Streams are highly modified waterbodies corresponding to the habitat 'Drainage ditch' (FW4) and/or 'Depositing river' (FW2). These channels have been subjected to severe modifications in part as a result of arterial drainage schemes, and some stretches appear to be regularly maintained and entirely artificial. A long stretch of the River Glore has been channelised upstream of the proposed Coole Wind Farm site, as evident by the visible deepening and straightening. Nevertheless, these rivers are significant because of their direct connection with Lough Derravaragh SPA and Lough Iron SPA further downstream on the River Inny.¹⁸

¹⁷ Environmental Impact Assessment Report, Chapter 8, section 8.5.5 Cumulative Effects, page 8-36.

¹⁸ The information about the River Glore and the Mayne and Monktown Streams comes from our own knowledge of the area, from earlier reports on the aquatic ecology of the area, and from the report by Mr Colm McLoughlin, Planning Inspector, An Bord Pleanála, 20 December 2018; paragraphs 7.4.3.1 & 7.4.3.2, pages 126-127 (Board's case reference ABP-300686-18).



Neighbouring wetlands and watercourses, including their associated vegetation, are one of the most sensitive features within the study area; and we find it extraordinary that neither the Mayne nor the Monkton Streams are mentioned in the applicant's Natura Impact Statement (NIS) or in Chapter 9 (Hydrology) of the applicant's EIAR. These omissions can only serve to reduce our confidence in the findings of the applicant's NIS and EIAR.

In addition to these several larger and smaller rivers mentioned above, there are many quite small streams which would have to be crossed by the proposed grid connection cable, if permitted. A total of 16 watercourse crossings are mentioned in section 3.3.1 of the applicant's Natura Impact Statement (NIS); these are shown on a map (Figure 3-2) on page 12 of the NIS, which states that 7 of these are river or stream crossings, while the remaining crossings are classified as culverts.

What we find again surprising is the absence of any mention in the applicant's site description or in the Natura Impact Statement of the existing drains across the site of the proposed wind farm. These drains serve to maintain a reduced level of water in the peatlands where the turbines would be constructed, if permitted; and, if they had not been constructed and were not being maintained (even inadequately) by the current occupiers of the land (the peat extraction companies), it would be necessary for the applicant to excavate these drains in order to partially dewater the site before carrying out any construction work such as road building or excavation works for the wind turbine bases.

These drains are well described in the report by the Board's Inspector who considered the appeal against the decision by Westmeath County Council to refuse planning permission for the previously proposed 13-turbine wind farm (see section 3.4 above; Board's case reference ABP-300686-18).

The Board's Inspector stated that:

"The surface of the main turbine site, which contains three distinct basins, is drained by a network of parallel-running peat drains that are typically spaced every 15m. Each of the basins have their own separate drainage systems that largely follow the same drainage format. Each basin has its own outfall points, each of which are preceded by a series of settlement ponds. Drains slope towards the edge of their respective basins towards a larger periphery headland drain. Four surface water outflows from the northern section of bog are located along the northern side draining into a main drain that flows directly into the River Inny, while a single outflow serving this basin is located on the southern side draining into the River Glore. The central basin contains four outfalls, one of which drains the eastern side of the basin to the River Glore and the remaining three outfalls drain the western side to the River Inny. The western side of the southern basin drains towards two separate drains each with an outfall point that



drain to the River Inny. The eastern side drains towards a tributary of the River Glore to the east of the site".¹⁹

Visual inspection of some of these drains by members of the North Westmeath Turbine Action Group shows that the settlement ponds had not been maintained by the companies extracting and milling peat, and they were discharging peat-contaminated overflow to the Rivers Glore and Inny. Our observations are confirmed by the Board's Inspector who noted in his report dated 20 April 2020 that the planning file which he examined contained references to alleged unauthorised intensification and the discharge of water to the River Inny (see footnote in section 4.7.4 below).

4.3 Unauthorised Extraction of Peat from the Proposed Wind Farm Site

In section 4.2 above, we provided information to the Board about the drainage of the peatlands or bogs comprising the proposed wind farm site – this drainage being necessary to allow continuing extraction, milling and removal of large quantities of peat from these bogs.

Referring again to the report by the Board's Inspector who considered the appeal against the decision by Westmeath County Council to refuse planning permission for the previously proposed 13-turbine wind farm (see section 3.4 above; Board's case reference ABP-300686-18), we find that he described the area from which peat is being removed:

"The peat-milling production area is divided by parallel drainage channels, each spaced approximately 15m apart".²⁰

The companies carrying out the peat removal are listed in the planning application which provides letters of consent from Clover Peat, Westmeath Peat and Cavan Peat; but we are also aware that peat is being extracted by Bulrush Horticulture, Westland Horticulture, Harte Peat and Tyrone Peat. Three of these companies have made applications to the Environmental Protection Agency for licences, but have been refused on account of their not having planning permission for their operations, while the remaining companies are also most probably operating without any licences. The table below may provide some further information, even though the relationships between these companies is not fully known to us, and has not been made clear to the Board.

¹⁹ Report by Mr Colm McLoughlin, Planning Inspector, An Bord Pleanála, dated 20 December 2018; paragraph 7.3.5.18, page 93 (Board's case reference ABP-300686-18).

²⁰ Report by Mr Colm McLoughlin, Planning Inspector, An Bord Pleanála, dated 20 December 2018; paragraph 7.3.4.2, page 76 (Board's case reference ABP-300686-18).



Company	Ownership status and EPA licence held
Bulrush Horticulture	Ownership status not known; former EPA licence held; reference number P0974-01 .
Cavan Peat	Landowner consent given; no EPA licence; land being used by Westland Horticulture Ltd for extraction and removal of peat.
Clover Peat	Landowner consent given; no EPA licence, but Clover Peat Products is part owned by Bulrush Horticulture.
Harte Peat	Ownership status not known; former EPA licence held; reference number P1119-01 .
Tyrone Peat	Ownership status not known; no EPA licence.
Westland Horticulture	Occupier of lands owned by Westmeath Peat Ltd and by Cavan Peat Ltd, engaged in extraction and removal of peat; former EPA licence held; reference number P0914-01 .
Westmeath Peat	Landowner consent given; no EPA licence; land being used by Westland Horticulture Ltd for extraction and removal of peat.

Table 4.3 Companies extracting, milling and removing peat from the lands in and around the proposed wind farm site.

A memorandum dated 12 November 2020 from the Environmental Licensing Programme of the EPA to the Board of the Environmental Protection Agency states that applications were made:

*“... for Integrated Pollution Control (IPC) licences, one received on the 16th October 2013 from Bulrush Horticulture Limited for an installation located at Camagh Bog, Doon, Castlepollard, County Westmeath, one received on the 7th October 2019 from Harte Peat Limited for an installation located within the townland of Derrycrave, Finnea, County Westmeath and one received on 31st July 2013 from Westland Horticulture Limited for an installation located at Lower Coole, Mayne, Ballinealoe & Clonsura, Near Coole & Fineagh, County Westmeath. The Agency regulates the peat sector through the licensing of the activity provided for in the EPA Act 1992 as amended, specifically in Part IV and Schedule 1 where the licensable activity is delineated as **the extraction of peat in the course of business which involves an area exceeding 50 hectares.***



The application submitted by Harte Peat Ltd was submitted to the Agency following an order of the High Court in which a settlement agreement between the EPA and Harte Peat Ltd and Lismohr Limited was made. Under the terms of this agreement Harte Peat Ltd and Lismohr Ltd agreed to apply to the Agency for a licence within six months. The licensing regime that they were to make the application under was the European Union (Environmental Impact Assessment) (Peat Extraction) Regulations 2019 (S.I. No. 4/2019), however, these regulations along with the Planning and Development Act 2000 (Exempted Development) Regulations 2019 were set aside by Order of the High Court on 20th September 2019. This meant the legislative position pertaining to licence applications for the extraction of peat reverted to that which was in place prior to the enactment of S.I. No. 4/2019 and large-scale peat extraction was no longer an exempted development under the Planning and Development Act 2000 as amended.

The Agency is required to assess whether licence applications contain a grant of permission or confirmation of such permission being sought (this includes substitute consent application), (Section 87(1B) of the Environmental Protection Agency Act 1992 as amended).

In May 2020, for the purposes of determining compliance with Section 87(1B), the Agency wrote to Harte Peat Ltd, Bulrush Horticulture Ltd and Westland Horticulture Ltd, requesting details of the grant of planning permission or confirmation that an application for such permission was being sought. Bulrush Horticulture Ltd responded on the 12th June 2020 outlining that it intended to apply to An Bord Pleanála in the coming weeks for leave to apply for substitute consent. Westland Horticulture Ltd responded on the 15th June 2020 outlining that An Bord Pleanála had granted leave to apply for substitute consent and that it would be applying to An Bord Pleanála for substitute consent. Harte Peat Ltd responded on 29th May 2020 confirming that no grant of planning permission exists, that there is no planning permission under consideration and that they consider that when the licence application was made and receipted, it did not require planning permission and that there is no requirement to obtain planning permission.

The Agency wrote to Harte Peat Ltd on 04 August 2020 outlining that it appears to the Agency that the licence application is one in respect of an activity that prima facie involves development or proposed development for which a grant of planning permission may be required. The Agency again requested the applicant to provide details of planning permission. The applicant's response dated 10th and 11th August 2020 sought the basis for the Agency concluding that the requirements of Section 87 were not met and sought details of the statutory basis for requiring planning permission as part of the licence application.



A further letter issued to Harte Peat Ltd on 21st October 2020, re-confirming the Agency's position with respect to Section 87(1B). The Agency outlined that a declaration under Section 5 of the Planning and Development Act, 2000 as amended would be accepted as conclusive proof that planning permission is not required for the activity.

To date, the following information remains outstanding from both Harte Peat Ltd and Bulrush Horticulture Ltd: details of planning permission having been granted, confirmation that an application for such permission or substitute consent has been sought or a Section 5 declaration.

Section 87(1C)²¹ requires the Agency to refuse to consider an application that does not comply with Section 87(1B). As neither Harte Peat Ltd nor Bulrush Horticulture Ltd have made an application for substitute consent or for leave to apply for substitute consent to An Bord Pleanála, the Agency's request has not been complied with to the extent necessary to bring the applications into compliance with Section 87(1C) of the EPA Act 1992 as amended.

Licence applications which are not accompanied by:

- Details of the relevant grant of planning permission, or*
- Confirmation from the planning authority that an application for permission has been made, or*
- A Section 5 declaration under the Planning and Development, Act 2000 as amended,*

should be refused to be considered by the Agency pursuant to Section 87(1C) of the EPA Act, 1992 as amended.

Westland Horticulture Ltd have been granted leave to apply for substitute consent and have until the 23rd November 2020 to submit an application to An Bord Pleanála for substitute consent. Should no application be submitted, this licence application can be treated similarly to the Harte Peat Ltd and Bulrush Horticulture Ltd licence applications".²²

We have quoted this short memorandum in full, as it sets out the recent position of the Integrated Pollution Control (IPC) licences which were held by three of the companies extracting peat. Following the approval of that memorandum by the

²¹ 87(1C) EPA Act 1992 as amended. Where an application for a licence is made to the Agency in respect of an activity that involves development or proposed development for which a grant of permission is required but the applicant does not comply with subsection (1B), the Agency shall refuse to consider the application and shall inform the applicant accordingly.

²² Memorandum dated 12 November 2020 from the Environmental Licensing Programme of the EPA to the Board of the Environmental Protection Agency.



Board of the EPA, the Agency wrote to the named companies, stating that the Agency refuses to consider their licence applications, in accordance with Section 87(1C) of the EPA Act 1992 (as amended), and that it is a breach of Section 82(2) of the EPA Act 1992 (as amended) for a person to carry on a specified or prescribed activity for Class 1.4 in the absence of a licence.²³

It is therefore clear that the existing peat milling and removal activities on the site of the proposed wind farm are an unauthorised use; and in order to assist the Board to examine this issue further in its consideration of the current planning application by Coole Wind Farm Limited, we provide some additional information in section 4.4 below.

The memorandum also refers to neither Harte Peat Ltd nor Bulrush Horticulture Ltd having made an application for substitute consent or for leave to apply for substitute consent to An Bord Pleanála; and we will address this issue further in section 4.7 below.

4.4 Further Evidence that the Existing Peat Milling and Removal Activities on the Site of the Proposed Wind Farm are an Unauthorised Use

On 12 March 2010, Westland Horticulture Ltd made an application to the EPA for an IPPC licence to permit the extraction of peat at Lower Coole, Mayne, Ballinealoe and Clonsura, County Westmeath (EPA Reference **P0914-01**). The applicant stated that planning permission for the application was not needed. However, following receipt of the application, the Agency requested the applicant to:

- i) provide written confirmation from the planning authority that the activity was exempt, and did not need planning permission; and,
- ii) to prepare and submit an Environmental Impact Statement to the Agency.

A request for a Declaration under Section 5 of the Planning and Development Act, 2000, as amended, was made by Friends of the Irish Environment to the planning authority on 16 November 2011. It referred to the drainage of bogland, peat extraction and handling, the creation of accesses from public roads and other associated works at Lower Coole, Mayne, Ballinealoe and Clonsura; these being the lands that were the subject of an application made by Westland Horticulture Ltd. to the EPA for an IPPC licence No. **P0914-01**. The lands were stated to be owned by Westmeath Peat Ltd. and by Cavan Peat Ltd., and were occupied by Westland Horticulture Ltd.

²³ Letters from the EPA to Harte Peat Limited, Bulrush Horticulture and Westland Horticulture on 24 November 2020 and 18 December 2020.



Westmeath County Council, as planning authority, then referred the matter to An Bord Pleanála for a declaration under Section 5 of the 2000 Act, as amended. The reference question was whether the drainage of bogland, peat extraction and handling, the creation of accesses from public roads and other associated works was or was not development, and was or was not exempted development (An Bord Pleanála reference **RL 2975**).

Westland Horticulture submitted that drainage of the bog had commenced as far back as 1982, and that neither the EPA nor the County Council *"had expressed concern or dissatisfaction with environmental issues associated with the activity on the land the company occupies"*, and the company further alleged that the claims made by the requester were *"irrelevant, inaccurate and unfounded"*.

The Board's Inspector concluded that a material change of use of the subject site had occurred when intensive peat extraction began, and that the subject matter of the case was therefore *"development"*. He further stated that *"the said development [i.e., peat extraction] would therefore be likely to have significant effects on a Natura 2000 site, and such effects are even more significant when considered in combination with the other peat extraction that takes place in the same drainage basin"*.

The outcome of the referral was that the development in question, being comprised of works to extract peat from each of the sites, requires environment impact assessment and appropriate assessment; and therefore it would cease to be exempted development from 21 September 2012 by virtue of section 4(4) of the Planning and Development Act 2000 as inserted by section 17 of the Environment (Miscellaneous Provisions) Act 2011.

The decision by An Bord Pleanála therefore stated as follows:

"An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the drainage of boglands, peat extraction, accesses from public roads, peat handling activities and other associated activities and works at Lower Coole, Mayne, Ballinealoe, Clonsura, near Coole and Fineagh, County Westmeath are development and were exempted development until the 20th day of September, 2012 after which it is development and not exempted development".

Approximately a year after Westland Horticulture had made the application to the EPA mentioned above, Bulrush Horticulture Ltd. applied to the EPA for an Integrated Pollution Prevention and Control licence to permit the extraction of peat from Camagh Bog, Doon, Castlepollard (EPA Reference **P0974-01**). This applicant also stated that *"Planning Permission relating to the application was not applicable"*, i.e., that the proposed development did not need planning permission.

In response to the application, the Agency requested the applicant to:



1. Submit confirmation in writing from the relevant planning authority that the activity has full planning permission or is an exempt development; and,
2. Submit confirmation in writing from the relevant planning authority and/or the Minister, as per the European Communities (Environmental Impact Assessment) Amendment Regulations, 2001 - S.I. No. 538 of 2001, in relation to the requirement for an Environmental Impact Statement (EIS) in respect of the activity. If they identify that an EIS is required please submit a complete EIS in support of the licence application.

A similar request for a declaration under section 5 had been made by Friends of the Irish Environment to the planning authority on 16 November 2011; and this request referred to the drainage of bogland, peat extraction and handling, the creation of accesses from public roads and other associated works at Camagh Bog; this being the area that was the subject of an application made by Bulrush Horticulture Ltd. to the EPA for an IPPC licence (EPA Reference **P0974-01**).

Westmeath County Council, as planning authority, then sought a declaration from An Bord Pleanála under section 5 of the Planning and Development Act, 2000, as amended (An Bord Pleanála reference **RL 2969**). In this case, the purpose of the referral to the Board was to determine whether or not the licensable activity was development or was not development, whether it was exempted development or was not exempted development, and whether an Environmental Impact Statement had to be submitted.

The decision by An Bord Pleanála was precisely the same as the decision on the referral question in connection with Westland Horticulture (reference **RL 2975** above) and stated that:

"An Bord Pleanála, in exercise of the powers conferred on it by section 5 (4) of the 2000 Act, hereby decides that the drainage of boglands, peat extraction, accesses from public roads, peat handling activities and other associated activities and works at Camagh Bog, Doon, Castlepollard, County Westmeath are development and were exempted development until the 20th day of September, 2012 after which it is development and not exempted development".

The effect of these two referrals is that all of the peat extraction activities and related works after 20 September 2012 on the lands mentioned in the referrals are unauthorised until planning permission has been obtained by the owners or occupiers for the works which have been on-going, and to our knowledge are still continuing, on these sites which comprise significant portions of the lands on which Coole Wind Farm Limited is currently applying to the Board for planning permission.

On 17 December 2014, Westland Horticulture, Westmeath Peat and Cavan Peat initiated Judicial Review proceedings against Westmeath County Council (High



Court Reference **2014/783/JR**); the applicants were given leave to proceed with the case; but it was struck out on 08 April 2015.

On 06 June 2013, Westland Horticulture, Westmeath Peat and Cavan Peat initiated Judicial Review proceedings against An Bord Pleanála (High Court Reference 2013/424/JR), and on 11 June 2013 were given leave to proceed with the case. The case dragged on for several years, being listed for mention 5 times in 2013, 12 times in 2014, twice in 2015, 7 times in 2016, and 8 times in 2017, a further mention being on 31 October 2017. The case was listed for hearing on 11 May 2017, 13 July, and for 6 days in October 2017; and Judicial Review was finally refused on 31 January 2019.

A similar case, taken by Bulrush Horticulture against An Bord Pleanála (*Bulrush Horticulture Ltd v. An Bord Pleanála*; High Court Reference: 2013/398/JR, neutral citation [2018] IEHC 58), was initiated on 30 May 2013; it was listed for mention on the same dates as the case by Westland Horticulture and others.

In a Judgment delivered by Mr. Justice Meenan on 08 February 2018,²⁴ the High Court made the clear distinction that commercial peat extraction is a “works” development rather than a “use” development, i.e., the carrying out of works (most particularly, peat excavation) on land. Commercial industrial-scale peat extraction (similar to quarrying), is by its nature not static, but involves an ongoing series of excavations and works, generally in different locations from year to year.

Mr Justice Meenan quoted (in paragraph 40 of his Judgment) from the report of the inspector of An Bord Pleanála, as follows:

“The continued extraction of peat and other ancillary works on each of the sites cited in the request causes a risk of emissions to surface waters that drain to Lough Derravaragh. The conservation objectives of the SPA at Lough Derravaragh include the maintenance of the conservation status of the wetlands habitats there which support species listed in ANNEX 1 of the Birds Directive. The said development would therefore be likely to have significant effects on a Natura 2000 site, and such effects are even more significant when considered in combination with the other peat extraction that takes place in the same drainage basin. It would therefore be necessary for an appropriate assessment of the works to be carried out before public authorities considered whether to agree to their continuation

²⁴ The High Court -- Judicial Review [2013 No. 424 J.R.] [2013 No. 398 J.R.]:

In the Matter of Section 50 of the Planning and Development Act 2000, as amended: *Bulrush Horticulture Ltd (Applicant) -v- An Bord Pleanála (Respondent); Westmeath County Council and Friends Of The Irish Environment (Notice Parties)*.

In the Matter of Section 50 of the Planning and Development Act 2000, as amended: *Westland Horticulture Ltd and Westmeath Peat Ltd and Cavan Peat Ltd (Applicants) -v- An Bord Pleanála (Respondent); Westmeath County Council and Friends Of The Irish Environment Ltd (Notice Parties)*; Judgment of Mr. Justice Meenan delivered on the 8th day of February, 2018.



in order to comply with the requirements of Article 6 of the Habitats Directive..."

At paragraph 48 of his Judgment, Mr Justice Meenan made it absolutely clear that the peat extraction activities should not only have been subject to Appropriate Assessment under the Habitats Directive, but they were unauthorised, by virtue of not having planning permission granted for them:

*"Therefore, under s.4(4) the "development" by Bulrush and Westland is no longer an "exempted development." The removal of the exemption is not retrospective. Section 4(4) does not make unlawful that which was lawful at the time it was done. The effect of s.4(4) is prospective. **Bulrush now require planning permission for their activities** [our emphasis]. The wording of s.4(4) which gives rise to this is clear and unambiguous."*

It is also very relevant to this planning application for the proposed wind farm, that at paragraphs 50 - 52 of his Judgment, Mr Justice Meenan stated that:

"peat handling activities and access roads are clearly linked to peat extraction activities",

and,

"peat handling activities and access roads would form part of the peat extraction "project".

Even though the Judgment did not specifically refer to the activities of Westland Horticulture in paragraph 48, he concluded (at paragraph 53):

"that neither Bulrush nor Westland are entitled to an order of certiorari quashing the decision of the respondent dated 15th April, 2013".

It follows logically that the use of any of the lands, which are the location of the proposed wind farm, for peat milling and extraction is unauthorised development.

It is abundantly clear that the on-going peat milling and peat removal operations are unauthorised; and the importance of this fact will become clear when we consider the relationship between the proposed wind farm, the grid connection and the continuing peat extraction.

4.5 Connection between the Proposed Wind Farm and the Unauthorised Activity of Peat Milling and Removal

While it might be argued that there is no connection between the use of the subject lands for the proposed wind farm and the continuing unauthorised activity of peat milling and extraction, we intend to show that there is such a connection, and that it is fundamental to the operation of the proposed wind farm.



The applicant's EIAR for the previously proposed 13-turbine wind farm stated that the existing roads on the subject lands would be used to enable the wind turbines to be constructed; and, in addition, it would be necessary to maintain the existing drainage system (previously installed and in continuous use for the purpose of facilitating peat extraction) in order to prevent the bog from becoming saturated and possibly waterlogged.

Without using the existing unauthorised private infrastructure developed by the companies mentioned in the Judgment quoted above, it would be impossible (or at least very difficult, and inordinately expensive) to construct and maintain the currently proposed 15-turbine wind farm. Furthermore, Coole Wind Farm Ltd has made it clear in the previous planning application for the 13-turbine wind farm that the applicant company proposes to use these facilities. The construction and operation of the proposed wind farm cannot therefore be separated from the unauthorised use of the subject lands for peat milling and extraction.

Given that the proposed wind farm and the ongoing activity of peat milling and removal are intimately connected, as demonstrated in section 4.5 above, and that the use of the lands for peat extraction is an unauthorised use, it follows that the proposed wind farm would be equally connected with, and part of, an unauthorised use.

Our submission is therefore that the planning application seeks permission for a proposed grid connection development which would, in effect and in substance, make use of the infrastructure (especially on-site roads and drainage of the boglands) which is required by and forms part of the existing unauthorised activity of peat extraction, milling and removal.

4.6 Proposed Interactive Management Group

As we have pointed out in section 4.1 above, the applicant's EIAR does not take into account the cumulative impacts of peat extraction and the construction and operation of the proposed wind farm; and we find this to be an extraordinary omission, given that the two activities are inextricably linked. In particular, Chapter 15 – Interactions – does not even make any mention of the commercial peat extraction activity, while Section 8.5.5 of the EIAR states that:

"there is no potential for significant cumulative effects in-combination with other local developments ..."

On the other hand, the applicant's EIAR states, at section 1.4.1 in Chapter 1, that:

*"While the wind farm is under construction and during the subsequent operational and decommissioning periods, **peat extraction activities may be carried out at the site in conjunction** [our emphasis]. In order to ensure adequate **interaction between the potential peat activities***



and the construction and operation of the wind farm [our emphasis] at the proposed site an Interactions Management Group (IMG) will be set up. The key role of the IMG will be to establish an interface between the wind farm and any peat extraction companies at the proposed site. The setup of the IMG will allow for a co-ordinated approach in the management of site activities and to allow for the environmental management of all activities associated with the proposed wind farm including site drainage, ecology, archaeology, geology etc.²⁵

The applicant's proposal to establish an Interactions Management Group (IMG), to address interactions between the proposed development and peat activities, is not new; it was included in the planning application for the previous 13-turbine wind farm, which is not "permitted" (as stated by the applicant on numerous occasions in this current planning application) but is the subject of Judicial Review proceedings, on which a Judgment is awaited.

We would ask the Board to note that in this application, the on-going peat extraction, milling and removal activities are described as "*potential peat activities*" which "*may be carried out at the site*" by "*any peat extraction companies*". It would appear that this reference to a probable or potential peat activity in the future is an attempt by the applicant to suggest that peat extraction has ceased, but may be resumed.

It is our submission that the peat extraction companies mentioned in sections 4.3 and 4.4 above are not only active on the site until very recently (when their work of peat extraction and removal was halted temporarily by the Covid-19 restrictions on work and travel), but appear to have the firm intention of resuming their activities (as shown in section 4.7.4 below), either with or without planning permission and an Integrated Pollution Prevention and Control Licence from the EPA. It would be extraordinary if they did not continue to remove peat, given the lack of enforcement of the environmental and planning legislation, and the profitability of their operations.

4.7 The Question of Substitute Consent

The Board will be aware, from Circular Letter EUIPR 04/2020, issued by the Department of Housing, Local Government and Planning on 24 December 2020, that significant amendments were made to the substitute consent provisions in Part XA of the Planning and Development Act 2000, and to Part 19 of the Planning and Development Regulations 2001 in response to the Supreme Court

²⁵ Environmental Impact Assessment Report, Chapter 1 Introduction, section 1.4.1 Interactions Management Group (IMG), page 1-6.



judgment issued on 01 July 2020 in the “Ballysax / McQuaid” cases – three joined appeal cases relating to two quarries.²⁶

This judgment, delivered by Mr. Justice McKechnie on 01 July 2020, found that certain provisions of the substitute consent system in the 2000 Act were inconsistent with the provisions of the Environmental Impact Assessment Directive (Directive 2011/92/EU, as amended) in terms of requiring exceptional circumstances and public participation.²⁷

Among the most important amendments to Part XA of the Planning and Development Act 2000, and relevant to the Board's consideration of this current planning application, are:

“Section 8 of the 2020 Act amends section 177K of the 2000 Act to provide the following:

- an amended subsection (1) where the Board may, subject to restrictions set out at new subsection (1A), grant or refuse an application for substitute consent;*
- under new subsection (1A) the Board is precluded from granting substitute consent unless it is satisfied that **exceptional circumstances** [our emphasis] exist that would justify the grant of such consent by the Board;*
- new subsection (1B) provides that subsection (1A) applies to both new applications for substitute consent submitted to the Board on or after 19 December 2020 and to existing applications pending before the Board on that date;*
- new subsection (1C) provides for the submission of further information by the applicant to the Board in respect of an existing application pending before the Board on 19 December 2020. In this regard:*

²⁶ *An Taisce (Applicant /Appellant) -v- An Bord Pleanála, J. McQuaid Quarries Limited, Ireland and The Attorney General (Respondents);* Supreme Court Record No: 9/19; High Court Record Number: 2014/342 JR; and

An Taisce (Applicant /Appellant) -v- An Bord Pleanála, Ireland, and The Attorney General (Respondents) and Sharon Browne (Notice Party); Supreme Court Record No: 42/19; High Court Record No: 2016/868 JR; and

Peter Sweetman (Applicant /Appellant) -v- An Bord Pleanála, Ireland and The Attorney General (Respondents) and Sharon Browne (Notice Party); Supreme Court Record No: 43/19 High Court Record No: 2016/542 JR; JUDGMENT of Mr. Justice William M. McKechnie delivered on the 1st day of July, 2020.

²⁷ Amendments to Substitute Consent procedures by Sections 6, 7 and 8 of the Planning and Development, and Residential Tenancies, Act 2020, & by the Planning and Development (Amendment) (No. 2) Regulations 2020; Circular Letter EU/IPR 04/2020; Department of Housing, Local Government and Planning, 24 December 2020.



- (a) Under paragraph (a) the Board must to invite the applicant to submit, within a specified period, information that the applicant considers relevant for the purposes of the Board satisfying itself as to the existence of exceptional circumstances,
 - (b) Under paragraph (b), the Board may request further information from the applicant concerning the existence of exceptional circumstances, notwithstanding that further information may have been previously requested,
 - (c) Under paragraph (c), where the applicant fails to comply with such a request under paragraph (b), the application shall be deemed to be withdrawn;
- new subsection (1D) provides for additional public consultation in respect of an existing application pending before the Board on 19 December 2020. The decision in respect of which will now include consideration of exceptional circumstances in accordance with new subsection (1A). In this regard, notwithstanding that any or all of these things may have already been done in respect of the application for substitute consent previously, the Board must:
 - (a) require the applicant to publish an additional newspaper notice, including advertising any additional information submitted under subsection (1C),
 - (b) make the application for substitute consent, including any additional information submitted, available for inspection at its offices and online on its website,
 - (c) give notice of the application, including any further information, to the prescribed bodies required to be notified of such applications,
 - (d) give a copy of any further information received in accordance with subsection (1C) to the relevant planning authority (the planning authority will have previously been given a copy of the application itself upon receipt by the Board),
 - (e) request the relevant planning authority to consider that information as part of its report to be submitted under section 177I of the 2000 Act on the application, including the relevant environmental reports, which shall include amending that report where required. The planning authority is given an additional 5 week timeframe to do so, and
 - (f) require the applicant to erect additional site notices of the application, copies of which must be submitted to the Board;



- *new subsection (1E) provides that an applicant must comply with any requirement of the Board under subsection (1D);*
- *new subsection (1F) provides that the relevant planning authority must comply with any request of the Board under subsection (1D);*
- *new subsection (1G) provides that the relevant planning authority must enter details of any further information it receives from the Board under subsection (1D) in the planning register;*
- *new subsection (1H) provides that the Board in making its decision to grant or refuse substitute consent must consider any submissions or observations made, including those made in respect of existing application pending before the Board on 19 December 2020 after compliance by the Board, the applicant and the planning authority with respective requirements and requests under subsection (1D); and,*
- *new subsection (1I) provides that Board may extend the timeframe within which a planning authority is required to submit its report under section 177I of the 2000 Act where further information has been received pursuant to subsection (1C)".*

4.7.1 Substitute Consent and the EIA Directive

While the above amendments to the legislation may be considered as an attempt to deal with the two issues which were at the core of the July 2020 Supreme Court referenced at the beginning of this section, namely public participation and "exceptional circumstances", it is our submission that the amended legislation fails to comply with the EU Environmental Impact Assessment Directive 2014/52/EU.

Article 1 of the Directive sets out quite clearly that:

- i) the preparation of an Environmental Impact Assessment Report (EIAR) by the developer must be the first component of the Environmental Impact Assessment (EIA) process, followed by
- ii) the carrying out of the necessary consultations, followed in turn by
- iii) the examination by the competent authority of the information presented in the EIAR and any supplementary information provided, leading to
- iv) the reasoned conclusion by the competent authority on the significant effects of the project on the environment; and subsequently to
- v) the integration of the competent authority's reasoned conclusion into the decision-making process.

Article 2 of the Directive, cited by Mr. Justice McKechnie in the Supreme Court Judgment, delivered on 01 July 2020, states that



*“Member States shall adopt all measures necessary to ensure that, **before consent is given** [our emphasis], projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects”.*

If a development has been constructed, or if works have been carried out in advance of this process, it follows that the purpose of the Environmental Impact Assessment process and the Directive have been defeated.

We cannot therefore see how the substitute consent provisions in Part XA of the Planning and Development Act 2000, though modified to take account of the Supreme Court judgment of 01 July 2020 in the cases listed above, cannot be other than in conflict with the EU Directive.

4.7.2 The Granting of Substitute Consent requires “Exceptional Circumstances”

Secondly, the question of whether or not “exceptional circumstances” arise, or can be claimed, is so vague as to defeat the purpose of the legislation, which therefore lacks clarity.

It is our submission that, in the case of the applications for substitute consent by the peat extraction companies named above, it would be extremely difficult, if not impossible, for the applicants to show that “*exceptional circumstances*” applied or occurred; and, that for this reason, the Board should grant consent.

It is our submission that the need to continue extracting peat is clearly not “exceptional” and therefore the Board should therefore withhold consent.

4.7.3 Substitute Consent and the Right to Public Participation

Thirdly, the Supreme Court Judgment, delivered by Mr. Justice McKechnie on 01 July 2020, refers at paragraphs 118 and 119 to public participation rights under EU law, and specifically to the Aarhus Convention; and, at paragraph 121, to the right of members of the public to be kept informed and to participate in the decision-making process set out in the EIA Directive.

In subsequent paragraphs 123 to 128 and to 134, Mr. Justice McKechnie strongly disagreed with the argument made by the Board which was that “*there is absolutely nothing in the EIA Directive which grants any right of involvement, or input prior to the substantive application*”, and he emphasised “*that European law requires that the public be entitled to participate at the application for leave stage of the substitute consent process*”, while adding that “*as the domestic law now stands, the public is therefore denied any opportunity to make submissions on such matters*”.



It is our submission that the amended section 177K of the Planning and Development Act, 2000, and in particular the new subsection (1D), do not give members of the public sufficient right to make submissions or observations on key elements of the overall process and to participate in the consent process at a time *"when all options are open"*. When the competent authority is examining the information presented, and arriving at a reasoned conclusion, one of the options which must always be considered is to withhold consent. If the works have commenced, or the proposed development has been constructed (or partly constructed), that option is no longer open. It is therefore our further observation that the substitute consent fails to comply with the Aarhus Convention and the EIA Directive.

4.7.4 The Question of Whether or Not Substitute Consent has been Granted by An Bord Pleanála to Operators excavating, Milling and removing Peat from the Subject Lands

In section 4.3 above, we noted that the EPA memorandum referred to the fact that neither Harte Peat Ltd nor Bulrush Horticulture Ltd had made applications for substitute consent or for leave to apply for substitute consent to An Bord Pleanála; while Westland Horticulture Ltd had been granted leave to apply for substitute consent and had until 23 November 2020 to submit an application to An Bord Pleanála for substitute consent.²⁸

When that memorandum was written in November 2020, substitute consent may have been seen by the Agency as a way of regularising the unauthorised activity, and thereby allowing the EPA to consider granting Pollution Prevention and Control Licences to the companies extracting peat from the area comprising the proposed wind farm application site. However, it appears from the information available on the website of An Bord Pleanála, none of the companies extracting peat have been granted Substitute Consent.

The status of the above-listed applications for substitute consent is mentioned very briefly in section 2.5.2, in chapter 2 of the applicants EIAR.²⁹ However, from the website of An Bord Pleanála we have added further information, giving the current status of these applications:

1. **ABP-307853-20** – Determination by An Bord Pleanála on 01 May 2020, requiring the owner/operator to apply to the Board for Substitute Consent; process initiated on 04 August 2020 by Westland Horticulture Limited for substitute consent for continuation of peat harvesting at Lower Coole, Mayne, Ballinealoe and Clonsura, near Coole and Finea, County

²⁸ Memorandum dated 12 November 2020 from the Environmental Licensing Programme of the EPA to the Board of the Environmental Protection Agency.

²⁹ Environmental Impact Assessment Report, Chapter 2, Section 2.5.2 Applications in the Vicinity of the Proposed Wind Farm Site; Peat Operations, page 2-36.



Westmeath; a request for extra time was granted to Westland on 25 August 2020; the application for Substitute Consent was due to be submitted on 23 November, 2020, but a further extension of time of six months was granted by the Board on 15 December 2020; and the application is now due to be submitted by 14 June 2021;

2. **ABP 305835** – On 28 April 2020, An Bord Pleanála decided to grant leave to Westland Horticulture Limited to apply for Substitute Consent for peat harvesting on lands at Lower Coole, Mayne, Ballinealoe and Clonsura, County Westmeath (application for leave was lodged on 30 October 2019); leave to make the application was granted on 01 May 2020, after the Board had considered the report and recommendations of the Board's planning inspector, dated 20 April 2020;³⁰ there is no more recent information on the Board's website to inform members of the public whether or not the necessary documents, including an remedial EIAR and a remedial NIS, have been submitted by the applicant company.
3. **ABP 307281-20** – On 29 May 2020, Bord na Móna applied for Substitute Consent for continuing peat extraction at the Mountdillon Bog Group, comprising bogs at Coolcraff, Cúil na gCon (Coolnagun) and Milkernagh, County Westmeath; the application was accompanied by a lengthy remedial EIAR and a remedial NIS, together with plans and drawings; and on 14 January 2021, the application was withdrawn by the applicant.

It is therefore our submission that none of the commercial companies extracting and removing peat from the lands which comprise a major portion of the planning application site have been granted substitute consent, and it follows logically that their activities remain unauthorised, and are tainted by a serious illegality.

A further observation is that these companies have, by making applications to the Board for substitute consent, clearly indicated their intention to continue removing peat.

³⁰ The report by the Board's Inspector refers in paragraph 4.3 to enforcement files dated between 2009 and 2014 which he found in the planning file; and he stated that these enforcement files described alleged unauthorised activities at the subject site (Coole and Clonsura) arising from the intensification of activities, the discharge of water to the River Inny (which discharges into Lough Derravaragh SPA & NHA), the need for EIA & AA, and the impact on archaeological sites.



4.8 Summary of Section 4 of our Submission

To summarise this section of our submission:

1. An Bord Pleanála has determined, and the High Court in *Bulrush Horticulture Ltd v. An Bord Pleanála* [2018] IEHC 58 has upheld, the determination that the peat extraction is development and not exempted development, and therefore the development falls squarely within the definition of “unauthorised works” in section 2(1) of the Planning and Development Act 2000 as amended.
2. The commercial companies which are extracting, milling and removing peat from the boglands which comprise the major portion of the application site, have not been granted planning permission; and the Environmental Protection Agency has withheld any consideration of the IPPC Licence applications until these operators can show that they have the necessary planning permission, or have been granted substitute consent.
3. No such substitute consent has been granted to any of the companies extracting peat from the proposed wind farm development site; and therefore the continuing extraction and removal of peat from the bogs named in the planning application remains unauthorised and in conflict with planning legislation and EU Directives.
4. The current “substitute consent” procedure, based on the changes made in Part XA of the Planning and Development Act 2000, and to Part 19 of the Planning and Development Regulations 2001 in response to the Supreme Court judgment issued on 01 July 2020 in the “Ballysax / McQuaid” cases, is vague and lacks legal clarity, and is in conflict with the fundamental rights to public participation embodied in the Aarhus Convention and the EIA Directive.
5. Granting “substitute consent” requires the applicant to demonstrate, and the Board to be satisfied, that “*exceptional circumstances*” exist which would justify the granting of such consent by the Board, and clearly there are no “*exceptional circumstances*” which would justify the granting of what amounts to a retrospective consent.
6. The EIAR and other documents supporting the current planning application do not refer to the impact of the ongoing peat extraction activity on the site, and the applicant’s EIAR does not take into account the cumulative impacts of peat extraction and the construction and operation of the proposed wind farm; the reason for these omissions is unclear, but their effect is to undermine the credibility of the applicant’s EIAR and NIS.
7. Nevertheless, the applicant has proposed to establish an Interactions Management Group (IMG), to address interactions between the proposed



development and the peat extraction activities, indicating that the applicant is fully aware of these activities.

8. Some of the small rivers flowing through the application site are not mentioned or described in the applicant's Natura Impact Statement (NIS) or in Chapter 9 (Hydrology) of the applicant's EIAR, even though these rivers are significant because they are tributaries of the River Inny, and they provide a direct hydraulic connection between the application site and Lough Derravaragh SPA and Lough Iron SPA further downstream on the River Inny.
9. There is no mention in the applicant's site description or in the Natura Impact Statement of the existing drains across the site of the proposed wind farm; despite these drains being described in the applicant's previous application for a 13-turbine wind farm on the same site.
10. These omissions further undermine the credibility of the applicant's EIAR and NIS, and result in these reports failing to meet the requirements of the EIA Directive and the Habitats Directive for Appropriate Assessment.
11. These drains and the settlement ponds have not been maintained by the companies occupying the site for the purpose of extracting and milling peat, and the drains discharge peat-contaminated overflow to the Rivers Glore and Inny, and some of these discharges have been the subject of enforcement files opened by Westmeath County Council.
12. The application for planning permission for the proposed 15-turbine wind farm requires the developer to coordinate and integrate the wind farm and the proposed grid connection with the continuing unauthorised peat extraction; and therefore the application includes a significant element of retention of the unauthorised "use" development.
13. An Bord Pleanála, acting as the planning authority, has no jurisdiction to consider an application for planning permission for the construction of a wind farm which would be intimately connected with the continuing unauthorised development of peat extraction and ancillary works pursuant to section 34(12) of the Planning and Development Act 2000, as amended, and having regard to the decision of the High Court in *Cleary Compost and Shredding Ltd v. An Bord Pleanála* [2017] IEHC 458.
14. A decision by An Bord Pleanála to grant planning permission for the proposed 15-turbine wind farm and the proposed grid connection would be contrary to proper planning and development, and to EU Directives.



5. POLICY CONTEXT – WESTMEATH COUNTY DEVELOPMENT PLAN

The current Westmeath County Development Plan 2021-2027, was made by the Council members at a special meeting of Westmeath County Council held on 22 March 2021; and the Plan came into effect on 03 May 2021.

5.1 References to the Westmeath County Development Plan in the Applicants EIAR

The applicant's EIAR addresses the Westmeath County Development Plan 2014-2020 in section 2.4.2.2, and the draft Westmeath County Development Plan 2021-2027 in section 2.4.2.3, while emphasising those policies which support large-scale wind farming on the proposed site.

Policy P-WIN2 in the 2014-2020 Plan is quoted as directing industrial-scale or large-scale wind energy projects onto cutover or cutaway peatlands in the county.

The siting of the proposed development, primarily on "*extensive areas of cutaway bog*" in the Inny River Lowlands Landscape Character Area (LCA), is stated to be in line with the requirements of the County Development Plan for preferred sites, even though the Inny River Lowlands LCA is classified as 'Low Capacity' for wind energy development.

Policy P-WIN6 is quoted, together with submissions made by the Department of Housing, Planning, and Local Government, objecting to this policy; together with the statement by the Chief Executive of Westmeath County Council that the policy would be "*seriously in conflict with national and regional policy.*"

Turning to the Westmeath County Development Plan 2021-2027, which was in draft when the EIAR was being prepared, Policy CPO 10.132 is described as having transposed in full Variation no. 2 of the County Development Plan 2014-2020, thereby maintaining the existing separation distances regarding wind farm design. The opinion of the Planning Regulator is quoted as stating that policy CPO 10.132 is contrary to government policy on wind energy development, particularly as it includes "*onerous separation distances between wind turbines and residential dwellings*".

Recommendation number 6 of the Planning Regulator's evaluation of the draft Plan is quoted in full, including his instruction "*to remove policy objective CPO 10.132 in its entirety from Chapter 10 of the draft development plan*"; and this is followed by the information that "*Notwithstanding the recommendation, the*



*Elected Members of the Local Authority voted to retain CPO 10.132 in the County Development Plan”.*³¹

5.2 Wind Energy Policy in the Current County Development Plan

5.2.1 General Renewable Energy Policy Objectives

Wind energy is listed among a variety of renewable energy sources in section 10.22 of Volume 1, the Written Statement, of the County Development Plan; other sources including solar, water (hydro, wave and tidal), geothermal (heat from below the surface of the earth) and biomass (wood, biodegradable waste and energy crops), and these are seen as necessary to assist in managing the transition of local economies to get the economic benefits of greener energy.

Relevant policies include:

Energy Policy Objectives (Section 10.22)	
CPO 10.139	<i>Support local, regional, national and international initiatives for limiting emissions of greenhouse gases through energy efficiency and the development of renewable energy sources which make use of the natural resources in an environmentally acceptable manner and having particular regard to the requirements of the Habitats Directive.</i>
CPO 10.140	<i>Facilitate measures which seek to reduce emissions of greenhouse gases and support the implementation of actions identified in the Westmeath County Council Climate Change Adaptation Strategy 2019-2024 and any future amendments.</i>
CPO 10.141	<i>Promote and support the use of renewable forms of energy as a contribution to the energy demand of all new buildings where it is consistent with the proper planning and sustainable development of an area.</i>

These are reasonable general policies which support renewable energy sources generally.

5.2.2 Wind Energy

The County Development Plan describes Ireland as one of the leading countries in its use of wind energy; wind being Ireland's largest and cheapest renewable

³¹ Environmental Impact Assessment Report, volume 1, Chapter 2, Section 2.4.2., pages 2-20 to 2-22.



electricity resource, and the second greatest source of electricity generation after natural gas. In 2018, wind energy provided 85% of Ireland's renewable electricity and 30% of our total electricity demand.

The Plan states that the Council recognises the importance of wind energy as a renewable energy source which can play a vital role in achieving national targets, and the Council will have regard to the Wind Energy Development Guidelines for Planning Authorities, prepared by the Department of Environment, Heritage and Local Government. We will comment below on the status of these guidelines.

Industrial scale wind farms are addressed in section 10.23.2, and the following policies apply to these wind farms. Our observations on these policies will be found in the next sections, below the table.

Table 5.2.2 Wind Energy Policy Objectives (Section 10.23.2 of the Current County Development Plan)	
CPO 10.142	<i>Have regard to the principles and planning guidance set out in Department of Housing, Planning and Local Government publications relating to 'Wind Energy Development' and the DCCAE Code of Practice for Wind Energy Development in Ireland and any other relevant guidance which may be issued in relation to sustainable energy provisions.</i>
CPO 10.143	<i>Provide the following separation distances between wind turbines and residential dwellings:</i> <ul style="list-style-type: none">• 500 metres, where the tip height of the wind turbine blade is greater than 25 metres but does not exceed 50 metres.• 1000 metres, where the tip height of the wind turbine blade is greater than 50 metres but does not exceed 100 metres.• 1500 metres, where the tip height of the wind turbine blade is greater than 100 metres but does not exceed 150 metres.• More than 2000 metres, where the tip height of the wind turbine blade is greater than 150 metres.
CPO 10.144	<i>Ensure the security of energy supply by supporting the potential of the wind energy resources of the County in a manner that is consistent with proper planning and sustainable development of the area.</i>



Table 5.2.2 Wind Energy Policy Objectives (Section 10.23.2 of the Current County Development Plan)	
CPO 10.145	<i>Encourage and support the development of small-scale wind energy development and single turbines in urban and rural areas and Industrial Parks, provided they do not negatively impact upon environmental quality, landscape, wildlife and habitats or residential amenity.</i>
CPO 10.146	<p><i>To strictly direct large-scale energy production projects, in the form of wind farms, onto cutover cutaway peatlands in the County, subject to environmental, landscape, habitats and wildlife protection requirements being addressed.</i></p> <p><i>In the context of this policy, industrial scale/large-scale energy production projects are defined as follows:</i></p> <p><i>Projects that meet or exceed any of the following criteria:</i></p> <ul style="list-style-type: none"> • <i>Height: over 100m to blade tip, or</i> • <i>Scale: More than five turbines, or</i> • <i>Output: Having a total output of greater than 5MW</i> <p><i>Developments sited on peatlands have the potential to increase overall carbon losses. Proposals for such development should demonstrate that the following has been considered:</i></p> <ul style="list-style-type: none"> • <i>Peatland stability; and</i> • <i>Carbon emissions balance.</i>
CPO 10.147	<p><i>Ensure that proposals for energy development demonstrate that human health has been considered, including those relating to the topics of:</i></p> <ul style="list-style-type: none"> • <i>Noise (including consistency with the World Health Organisation's 2018 Environmental Noise Guidelines for the European Region);</i> • <i>Shadow Flicker (for wind turbine developments, including detailed Shadow Flicker Study);</i> • <i>Ground Conditions/Geology (including landslide and slope stability risk assessment);</i> • <i>Air Quality; and Water Quality;</i> • <i>Assessment of impacts on collision risk species (bird and bats)</i>



Table 5.2.2 Wind Energy Policy Objectives (Section 10.23.2 of the Current County Development Plan)

CPO 10.148	With regard to wind energy developments, to ensure that the potential for visual disturbance should be mitigated by applying an appropriate setback distance, which, where relevant, complies with available Ministerial Guidelines.
CPO 10.149	Support the preparation of a Management Plan for the Industrial Peatlands in the County, in consultation with stakeholders and adjacent Local Authorities. The Plan should focus on recreational opportunities, renewable energy, hydrological and ecological considerations subject to environmental assessment and the requirements of Article 6 of the Habitats Directive.

5.2.3 Separation Distances Between Wind Turbines And Residential Dwellings (Policy CPO-143)

As the Board will be aware, this is undoubtedly the most controversial policy, and therefore we consider that it is essential to examine the background to it, the reasons for it, and its appropriateness.

The history of this policy began as zoning objective **P-WIN6** in the Westmeath County Development Plan which was adopted on 21 January 2014, and which came into effect on 18 February 2014. Objective P-WIN6 required:

"a setback distance from residential dwellings of ten times the height of Industrial Wind Turbines",

and, *"in the context of this policy, Industrial or Large-scale energy production projects are defined as follows: Projects that meet or exceed any of the following criteria:*

Height: over 100m blade to tip, or,

Scale: More than 5 turbines, or ,

Output: Having a total output of greater than 5MW"

On 10 July 2014, Minister Jan O'Sullivan, Minister for State in the Department of the Environment, Community and Local Government issued a Direction to Westmeath County Council, ordering that wind energy policy P-WIN6 should be deleted from the Westmeath County Development Plan 2014-2020; and the Plan was subsequently amended in compliance with the Ministerial Direction.



On 24 April 2017, Westmeath County Council adopted Variation No. 2 of the Westmeath County Development Plan 2014-2020, and this variation was formally incorporated into the Plan on 19 May 2017. This variation introduced similar standards for separation distances between wind turbines and residential dwellings, and it amended the County Council's wind energy strategy by inserting a new policy **P-WIN 6** into Section 10.6 of Volume 1 of the County Development Plan.

Policy P-Win 6 sets out the following minimum separation distances between wind turbines and residential dwellings:

- **500 metres**, where height of the wind turbine generator is greater than 25 metres but does not exceed 50 metres;
- **1000 metres**, where the height of the wind turbine generator is greater than 50 metres but does not exceed 100 metres;
- **1500 metres**, where the height of the wind turbine generator is greater than 100 metres but does not exceed 150 metres; and,
- **More than 2000 metres**, where the height of the wind turbine generator is greater than 150 metres.

On this occasion there was no response by the relevant Minister, i.e., the Minister did not issue a Direction under Section 31 of the Planning and Development Act, 2000, as amended.

We are not aware of the specific reasons why the relevant Minister did not issue a Direction, but the Board may be aware of a case some five years ago in which Donegal County Council was issued with a Ministerial Direction under Section 31, requiring the planning authority to delete from the relevant County Development Plan a policy on wind farm siting which was very similar to P-WIN6, but the Minister's Direction was quashed by the High Court.

Donegal County Council had made a material variation (Variation Number 2) to the County Development Plan, and this variation included a policy similar to that in the variation adopted by Westmeath County Council and described above, namely that there should be "*a setback distance from residential dwellings of ten times the height of Industrial Wind Turbines*".

Councillor John Campbell (Donegal County Council) then sought a declaration that a Ministerial Direction entitled "*Planning and Development (County Donegal Development Plan 2012-2018) Direction 2014*", issued by the Minister to Donegal County Council on 06 October 2016, should be quashed.

The Minister's Direction attempted to strike down the adopted variation, but the High Court granted an Order of Certiorari quashing the Ministerial Direction, on



the grounds that the Minister had failed to set out adequate reasons for his decision to issue the Direction.³²

In the draft 2021-2027 County Development Plan for County Westmeath (issued in February 2020), Policy P-WIN6 was replaced by policy objective **CPO 10.132** (section 10.23.2, page 309) which was essentially similar to P-WIN 6, in that it provided for the same minimum separation distances between wind turbines and residential dwellings.

The draft County Development Plan also included policy objective **CPO 10.135** which was intended to provide clarity by defining industrial scale or large-scale energy production projects as follows:

"Projects that meet or exceed any of the following criteria:

- *Height: over 100m to blade tip, or*
- *Scale: More than five turbines*
- *Output: Having a total output of greater than 5MW"*

Policy objective **CPO 10.135** also added that:

"Developments sited on peatlands have the potential to increase overall carbon losses. Proposals for such development should demonstrate that the following has been considered:

- *Peatland stability; and*
- *Carbon emissions balance".*

These revised policies attracted strong condemnation by the Planning Regulator, who wrote to Westmeath County Council on 30 June 2020, recommending that:

"The planning authority is required to remove policy objective CPO 10.132 in its entirety from Chapter 10 of the draft development plan as the inclusion of such mandatory separation distances between wind turbines and residential dwellings would restrict the potential for wind farm development in the county, would undermine other policy objectives supporting wind farm development and be contrary to national policy and Ministerial guidance on wind farm development".³³

The reasons given by the Planning Regulator were that:

³² John Campbell -v- The Minister For Housing Planning Community And Local Government (2016 976 JR).

³³ Letter dated 30 June 2020 from the Office of the Planning Regulator to Westmeath County Council, Recommendation number 6, page 11.



“ the draft plan does not outline how the implementation of the plan will contribute to realising overall national targets on renewable energy and climate change mitigation, and in particular wind energy production and the potential wind energy resource. This requirement is contained in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change and Wind Energy Development”.

In the same letter to Westmeath County Council, the Planning Regulator noted that:

“the planning authority has included a definition for industrial scale / large-scale wind energy production projects in CPO 10.135, without there being any accepted national definition of such a category of development”.

While apparently supporting the policy intent in CPO 10.135, the Planning Regulator recommended that the definition of industrial scale / large-scale energy production projects should be deleted in the absence of a national definition of such developments; and the letter's recommendation number 8 required the planning authority:

“to amend policy objective CPO 10.135 to delete the definition for industrial scale / large-scale wind energy production projects”.

These recommendations were considered by the Councillors at a series of meetings held in 2020; various alternatives were discussed; and on 03 May 2021 Westmeath County Council produced and agreed the final version of the 2021-2027 County Development Plan containing the wind energy policies CPO 10.142 to CPO 10.148 as set out in Table 5.2.2 above.

While wind energy policy matters might now appear to have been settled, this was not the case. The Planning Regulator wrote again to Westmeath County Council, requesting deletion of the above policies; and, on 29 April 2021, the Minister of State at the Department of the Housing, Local Government and Heritage issued a draft “Direction” to Westmeath County Council, under Section 31 of the Planning and Development Act 2000 (as amended). The Direction, based on a recommendation made to the Minister by the Planning Regulator, stated that:

“The Planning Authority is hereby directed to take the following steps with regard to the Development Plan:

- (i) Delete wind energy policy objective CPO 10.143 in its entirety from section 10.23.2 of the Development Plan; and,*
- (ii) Take such steps as are required to identify, on an evidence-basis and using appropriate and meaningful metrics, the wind energy production (in megawatts) which County Westmeath can contribute*



in delivering its share of overall Government targets on renewable energy and climate change mitigation over the plan period, consistent with the requirements set out in the Specific Planning Policy Requirement in the Interim Guidelines for Planning Authorities on Statutory Plans, Renewable Energy and Climate Change (July 2017)".

The reasons given by the Minister in the "Direction" were that the Development Plan was inconsistent with Ministerial Guidelines issued four years previously, in July 2017, in that:

"the Plan fails to identify the wind energy production which County Westmeath can contribute to the overall Government target for renewable energy;

"Policy objective CPO 10.143 renders it impossible to progress a wind energy project with a wind turbine tip height of over 100 metres or over 150 metres in the vast majority of the county";

"Policy objective CPO 10.143 would significantly limit or constrain renewable energy projects";

"The Development Plan contains conflicting objectives on wind energy development such that the Policy objectives supporting wind and renewal energy development in chapters 10 and 11 of the adopted Development Plan cannot be achieved having regard to the separation distances required by wind energy policy objective CPO 10.143"; and

"The Development Plan has not been made in a manner consistent with the recommendations of the Planning Regulator."

Following receipt of the Section 31 Direction from the Minister, Westmeath County Council advertised (in accordance with Section 31 (7) of the 2000 Act, as amended) that written submissions or observations on the draft Ministerial Direction may be made to the planning authority before 24 May. This statutory public notice, dated 11 May was published on the County Council's website and in the Westmeath Examiner dated 15 May 2021.

The notice stated that submissions or observations received before the cut-off date of 24 May will be taken into consideration by the Planning Regulator before he makes a recommendation to the Minister on the matter.

At this stage, we cannot say how many submissions will be made, or what might be the response of the members of Westmeath County Council, or the Planning Regulator, or the Minister. However, we consider that it is necessary and essential to provide to the Board our own views on the wind energy policy objectives contained in the adopted Westmeath County Development Plan, and



we request that the Board should take these into consideration when determining the current planning application for the proposed wind farm and grid connection. Our observations on these policies follow in sections 5.2.4 to 5.2.5.6 below.

5.2.4 Our Observations on Wind Energy Policy CPO 10.143 – Separation Distances Between Wind Turbines And Residential Dwellings

While the previous versions of this policy were initially considered to be controversial and raising difficulties for prospective wind farm developers, it would be fair to say that the graded separation distances set out in Policy CPO 10.143 provide clear and advance information to a wind farm developer as to whether a proposed development will comply with, or will be in conflict with, the County Development Plan.

The separation distances in CPO 10.132 also provide a choice to a prospective developer – to aim for larger wind turbines in areas more remote from inhabited houses, or to apply for permission to construct smaller wind turbines, which would significantly increase the extent of permissible areas where the necessary separation distances could be achieved. In other words, the current policy provides clarity and choice – essential requirements for any legislative measure.

It is our submission that Policy CPO 10.143 would not, as alleged by the Planning Regulator, make it *“impossible to progress a wind energy project with a wind turbine tip height of over 100 metres or over 150 metres in the vast majority of the county”*, or that this policy *“would significantly limit or constrain renewable energy projects”*.

While there would certainly be some constraints on the locations of very large wind turbines (those with a tip height of over 100 metres or over 150 metres), the policy does not make it impossible to *“progress a wind energy project”* of this size. A calculation undertaken by Coole Wind Farm Limited for the previously proposed 13-turbine wind farm concluded that *“When a 1,000m separation distance is applied (i.e., for wind turbine generators between 50m and 100m in height, 5.3% of the county will be left available for wind energy development”*.³⁴

While this might appear to be only a small proportion of the County's area, it would still leave a very large area of land free of the separation distance constraint.

A second important point, of which the Board should also be aware, is that references in the Planning Regulator's letter and in the Minister's Direction to *“wind energy development”* and *“wind energy production”* are easily seen to mean only large-scale industrial wind farms; and both the letter and the Direction

³⁴ Appeal to An Bord Pleanála by Coole Wind Farm Limited against decision by Westmeath County Council to refuse planning permission for a proposed 13-turbine wind farm, 18 January 2018, page 44; An Bord Pleanála reference ABP-300686-18.



completely ignore the energy potential of smaller-scale installations consisting of single turbines or a few turbines, generally owned and operated by village communities, farmers' co-operatives or individuals.

In Germany, for example, approximately 26,770 wind turbines were operating by year end 2015, producing about 13.3 % of the country's total electrical power requirements, and wind power has a high level of social acceptance. Large energy companies have a disproportionately small share of the market, and current German government policy is focussed on directing large-scale wind farms offshore, so that large wind turbines will be erected far from the coast, in areas where wind power density is higher and wind energy is more consistent than on-shore.

It is therefore our submission that Policy CPO 10.143 is consistent with proper planning and development, and with the need to regulate large-scale wind farming in County Westmeath; and this policy should not be ignored or set aside by the Board when determining the current planning application by Coole Wind Farm Ltd.

5.2.5 Our Observations on other Wind Energy Policies, and their Relevance to the Planning Application

5.2.5.1 Security of Supply

Policy **CPO 10.144** is intended to ensure the security of energy supply by supporting the potential of the wind energy resources of the County in a manner that is consistent with proper planning and sustainable development of the area.

Our observation is that a decision by the Board to refuse planning permission for the proposed wind farm would in no way jeopardise the security of supply of renewable energy in County Westmeath, taking into account that there are many other potential sources of renewable energy in the County (for example, solar, small-scale wind, anaerobic digestion of agricultural residues, etc). Furthermore, we suggest that a decision by the Board to refuse planning permission for the proposed wind farm would be consistent with proper planning and sustainable development.

5.2.5.2 Small-Scale Wind Energy Developments

Policy **CPO 10.145** is intended encourage and support the development of small-scale wind energy development and single turbines in urban and rural areas and Industrial Parks, provided they do not negatively impact upon environmental quality, landscape, wildlife and habitats or residential amenity.

It should be clear to the Board that this wind energy policy is supported by NWTAG, especially if such wind energy developments are community owned. It is our submission that a decision by the Board to grant planning permission for



the proposed large-scale wind farm would be in conflict with this policy, not only because of any physical competition for the wind energy resource between large-scale and small-scale wind energy developments, but because a decision to grant permission for the currently proposed large-scale 25-turbine wind farm would discourage communities and individuals from making any applications for small-scale or single turbine wind energy developments.

In fact, such a general feeling already exists in the communities living in the area of the proposed wind farm – that the planning authorities favour only large corporate ventures, and that the concerns of local communities receive very little attention, and that any proposals by local communities would be similarly treated. A decision to grant permission for the proposed wind farm would exacerbate this feeling.

5.2.5.3 *Wind Energy Developments on Cutover or Cutaway Peatlands*

There are three components in Policy **CPO 10.146**, the first of which is to strictly direct large-scale wind farms, onto cutover or cutaway peatlands in the County, subject to the necessary environmental, landscape, habitats and wildlife protection requirements being addressed.

While this is a generally acceptable policy, we consider that it should not be used by the Board as a basis for a decision to grant planning permission for the proposed wind farm on the subject site. As we have observed in earlier sections of this submission, the proposed development would be located on cutover bogland (section 4.1 above), but in an area where peat was being extracted, milled and removed without either planning permission or an EPA licence, i.e., the subject site is an area of large-scale unauthorised activity which has resulted in pollution of the River Inny (sections 4.2, 4.3 and 4.4).

However, we must point out that the applicant has used this policy to support the planning application, and has quoted in section 2.4.2.2 of the EIAR (page 2-22) a statement from the County Development Plan which refers to:

*“a strong history of energy production and an extensive electricity transmission network in place, the potential exists in such peatland areas for a smooth transition to renewable energy sources”.*³⁵

While this statement, attributed to the Regional Economic and Spatial Strategy for the Eastern and Midland Region (RSES) may be correct for some areas of the midlands, it is quite incorrect for the North Westmeath boglands, where there has been neither energy production (e.g., peat-fired power stations) nor an extensive electricity transmission network. We would therefore urge An Bord Pleanála to disregard this statement in the County Development Plan, as it does

³⁵ Section 10.23.2 in the current County Development Plan, page 340.



not apply to the subject site or to the surrounding area of North Westmeath, and therefore cannot be used as a reason for granting planning permission for the proposed wind farm.

The second component of Policy **CPO 10.146** is a definition of industrial-scale or large-scale wind energy projects; and while this definition was initially the subject of a request by the Planning Regulator for its removal from the County Development Plan, this particular request has not been repeated in the Minister's Section 31 Direction dated 29 April 2021.

It is our submission that this is a reasonable definition, that the Ministerial Direction did not ask for it to be removed from the County Development Plan, and that it clearly identifies the proposed 15-turbine wind farm as an industrial-scale or large-scale wind energy project.

The third component of Policy **CPO 10.146** is very relevant to the Board's consideration of this planning application, as it states that *developments sited on peatlands have the potential to increase overall carbon losses; and that proposals for such development should demonstrate that the following has been considered:*

- *Peatland stability; and*
- *Carbon emissions balance".*

Both of these cautions are important – the potential for water-saturated peat to become almost liquid when disturbed is well known as a consequence of recent "peat slides" on upland wind farming sites.

Even though the application site is relatively flat, it has been extensively disturbed by peat extraction and removal; while the proximity of the River Inny and the streams draining the subject site which flow into the river (see section 4.2 above) greatly increase the risk of an incident which would cause major pollution of the river by a mixture of liquified peat and water flowing off the site during or after heavy rainfall, an event more likely to occur as a consequence of climate change.

5.2.5.4 Human Health Effects of Wind Energy Developments

Policy **CPO 10.147** aims to ensure that proposals for energy development should demonstrate that human health has been considered, including the effects of noise, and shadow flicker; and such proposals should also take into account ground conditions, geology, air quality and water quality; and should include an assessment of impacts on collision risk species (bird and bats).

The policy requires a wind energy development proposal to be consistent with the World Health Organisation's 2018 Environmental Noise Guidelines for the European Region; to include a detailed shadow flicker study, and to include a landslide and slope stability risk assessment.



It is our submission that the Board must equally have regard to the issues raised in Policy CPO 10.147, especially the effects of wind farms on human health, an area in which there is increasing concern and evidence of adverse effects. The effects of the proposed wind farm on human health are addressed in a subsequent section of this submission.

5.2.5.5 *Visual Impact of Wind Energy Developments*

Policy CPO 10.148 aims to ensure that the potential for visual disturbance caused by wind energy developments should be mitigated by applying an appropriate setback distance, which, where relevant, complies with available Ministerial Guidelines.

Our submission on the most appropriate setback distances between wind farms and residential dwellings is included in section 5.2.4 above.

5.2.5.6 *A Management Plan for the Industrial Peatlands in the County*

Policy CPO 10.149 states that Westmeath County Council will support the preparation of a Management Plan for the Industrial Peatlands in the County, in consultation with stakeholders and adjacent Local Authorities; and that the Plan should focus on recreational opportunities, renewable energy, hydrological and ecological considerations, subject to environmental assessment and the requirements of Article 6 of the Habitats Directive.

It is our submission that this is a good policy, as it considers all of the benefits of the County's peatlands; though we would emphasise the benefits to climate of re-wetted and revegetated peatlands (see section 8 below), and we would add the educational value of peatlands as well as their recreational opportunities.

It is therefore our submission that, when considering the planning application by Coole Wind Farm Ltd, the Board should take into account the intention of this policy, and should refuse planning permission for the proposed wind farm on the grounds that to grant permission would be premature, pending the preparation and agreement of a management plan for the industrial peatlands in County Westmeath.



6. DRAFT REVISED WIND ENERGY DEVELOPMENT GUIDELINES

The planning application by Coole Wind Farm Ltd refers to the current draft wind energy development guidelines in the Environmental Impact Assessment Report, Chapter 2, section 2.4.3.4. This section states that:

"The Department of Housing, Planning and Local Government published the Draft Wind Energy Guidelines (referred to as the Draft Revised Guidelines) in December 2019 and these Draft Guidelines were under public consultation until 19th February 2020. Following the previous 2013 consultation and subsequent detailed engagement between the relevant Government Departments, a "preferred draft approach" to inform and advance the conclusion of the review of the 2006 guidelines was announced in June 2017. The current guidelines in force remain the 2006 guidelines, however it is acknowledged that the draft guidelines may be adopted prior to a decision issuing in relation to the current proposal, and accordingly in so far as is practicable the provisions of the Draft Guidelines have informed the design process for the current proposal".

The planning application further notes that:

"At time of writing, the Draft Guidelines are not yet in force, and the relevant guidelines remain those published in 2006".

While the 2019 draft revised Wind Energy Development Guidelines are a very definite improvement on the 2006 guidelines, we wish to emphasise to the Board that they remain uncertain, and have not been formally approved.

As the Board will be aware, the previous Wind Energy Development Guidelines, published in 2006, have become significantly out-dated as a consequence of large increases in the heights, sizes and power generation capability of wind turbines for which planning permission was being sought during the past decade. Many of these turbines had been granted by permission, usually on appeal to An Bord Pleanála, in the face of substantial public opposition, during which the 2006 Wind Energy Development Guidelines were repeatedly criticised by communities as being out of date and not fit for purpose.

Compared with the 2006 Wind Energy Development Guidelines, the draft revised Wind Energy Development Guidelines is a more comprehensive document, with the intention of:

"providing for enhanced community engagement ... [and] ... greater consistency of approach in planning for onshore wind energy



development, as well as providing greater certainty and clarity to the planning system".³⁶

Extensive consideration is given to the policy context, especially to the country's policies and international obligations on climate change and renewable energy, on the need to increase the proportion of renewable energy sources, and to reduce greenhouse gas emissions.

While this extensive detail is to be commended (despite the fact that it has taken "a lengthy process" for the draft revised guidelines to be developed and issued for consultation – as noted by the Minister for Housing, Planning and Local Government in his foreword), we consider that there are significant gaps and inconsistencies still remaining in the draft. Overall, we find that too little attention is paid to the role of local communities at the initial stages of siting and layout of a proposed wind farm, with the result that "consultation" is restricted to discussions about the level of community "benefits", while leaving the major issues untouched.

It is also disappointing that the focus in the Draft Revised Guidelines is still on large scale onshore industrial wind energy projects which impact directly on the lives, health, environment and built heritage of the rural communities hosting them, mostly against their will. This seems to be clear from the Minister's statement in the Foreword that:

"In the next decade, onshore wind will continue to be our main source of renewable energy".

One possible consequence of this "policy" (if it could be considered as a policy) is that the midlands would again be targeted as a prime area for the installation of very large commercial wind farms, such as that proposed in the present application by Coole Wind Farm Ltd.

Furthermore, it is our submission that relying on large-scale wind energy as a solution to climate change is not enough; government support is needed for other ways of meeting our climate change obligations. We would point out that the Citizens' Assembly, established in 2016, considered deeply the question of climate change and climate action over two weekends, from 30 September to 01 October 2017 and 4 to 5 November 2017. We found it extraordinary that the very well-researched and far-reaching report by the Citizens' Assembly merited only one mention in the draft revised Guidelines, where the report is seen as no more than one of a number of "representations" taken into account by the Joint Committee on Climate Action:

³⁶ Foreword by Minister Eoghan Murphy, T.D., Minister for Housing, Planning and Local Government.



"... the Joint Committee on Climate Action published a report on 'Climate change: a cross-party consensus for action' in March 2019, taking into account representations from the 2017 Citizen's Assembly Report and other evidence presented to the Committee".³⁷

We would emphasise that 100% of the members of The Citizens Assembly in their report on climate change recommended:

"that the State should take a leadership role in addressing climate change through mitigation measures, including, for example, retrofitting public buildings, having low carbon public vehicles, renewable generation on public buildings and through adaptation measures including, for example, increasing the resilience of public land and infrastructure."

And:

"the State should act to ensure the greatest possible levels of community ownership in all future renewable energy projects by encouraging communities to develop their own projects and by requiring that developer-led projects make share offers to communities to encourage greater local involvement and ownership."

The Reviewed Wind Energy Guidelines 2019 clearly discourage the development of micro and small renewable energy production in favour of large-scale onshore industrial wind energy developments, which have the effect of leaving communities with the burden of "hosting" these hugely imposing projects aesthetically and environmentally and with relationships within communities often irreparably destroyed.

The Citizens' Assembly also recommended that:

"99% of the Members recommended that the State should enable, through legislation, the selling back into the grid of electricity from micro-generation by private citizens (for example energy from solar panels or wind turbines on people's homes or land) at a price which is at least equivalent to the wholesale price."

It appears to NWTAG that the Revised Wind Energy Guidelines 2019, even though prepared with the involvement of the Department of Communications, Climate Action and the Environment, have ignored the recommendations of the Citizens Assembly by failing to facilitate the development of small and micro renewable energy generators; and, instead giving greater encouragement to large-scale wind energy developments which are unwanted by the host communities, have adverse effects on the landscape, will serve as continual

³⁷ Draft Revised Wind Energy Development Guidelines, Section 1.2 Policy Context; 1.2.1 Climate Change and Renewable Energy, page 4.



reminders of poor decisions made by the government, and will damage rural communities.

Most members of the North Westmeath Turbine Action Group are living and working in rural areas, and would like to see our own communities benefit from the renewable energy they create; many also have the capacity to micro produce renewable energy through photovoltaic, small-scale wind energy and hydro energy; going directly into the grid for use in the locality; producing green energy and an income at the same time.

Small-scale or local-scale community-owned or co-operatively-owned wind energy schemes should be supported and encouraged through the Revised Wind Energy Guidelines 2019, as proposed by the RESS High Level Design, and not ignored as appears to be the case in the Guidelines as currently drafted. Given the government's slow progress in revising the existing guidelines it would be safe to assume that it is very unlikely that this work will be done for many years, if at all. And so again rural communities may be put to the side in the interests of industrial-scale commercial companies and the opportunity for all of us to benefit from and participate in the greening of our environment and economy is lost.

In 5.10.1 of the Draft Revised Wind Energy Guidelines, community investment and ownership appears to be encouraged;

"Local ownership and part-ownership, across the scale of energy generation can have a real and lasting impact on rural communities, supporting employment and securing sources of income... net socio-economic benefits such as employment, supply chain opportunities, associated business and local revenue streams and community benefit arrangements are relevant material considerations in determining planning applications for renewable energy projects".

However the words have no significance if the supporting legislation, policies and regulations are not there to back them.

It is therefore our observation and submission to the Board that:

- i) When determining the current planning application by Coole Wind Farm, the Board should **not** have regard to the 2006 Wind Energy Development Guidelines, even if they remain in force simply because of a failure to bring a revised set of guidelines into force;
- ii) The 2006 Wind Energy Development Guidelines are hopelessly out of date, given the increasing size and height of wind turbines, the growing recognition that large-scale onshore wind farms are not the optimum way to increase Ireland's share of renewable energy; and,



- iii) There is an increasing awareness that local communities must become more involved in the ownership and decision-making in renewable energy, especially in rural areas, and the draft Revised Wind Energy Guidelines 2019 do not reflect this fact; and,
- iv) Given that the draft Revised Wind Energy Guidelines 2019 have not been formally adopted, and they do not have legal force, the Board should not be bound by them, or use compliance with these guidelines as a basis for granting planning permission for the proposed wind farm.

7. POLICY CONTEXT – RENEWABLE ENERGY AND CLIMATE

Chapter 2 of the applicant's EIAR opens with a discussion of renewable energy policy and targets, noting that renewable energy resources include solar, wind, water (hydropower, wave and tidal), heat (geothermal) and biomass (wood, waste), and that they offer sustainable alternatives to our dependency on fossil fuels as well as a means of reducing greenhouse gas emissions and providing opportunities to reduce Ireland's reliance on imported fuels (paragraph 2.1.1, page 2-1).

The 2019 Climate Action Plan is quoted at length, with a reference to the target of increasing the amount of electricity generated from renewable sources to 70% of the total, indicatively comprised of:

- at least 3.5 GW of offshore renewable energy;
- up to 1.5 GW of grid-scale solar energy; and,
- up to 8.2 GW total of increased onshore wind capacity.

We would point out to the Board that the 2019 Climate Action Plan (CAP) has been subjected to lengthy criticism as failing to enable Ireland to meet the objectives required by EU Directive 2009/28/EC and in the 2030 Climate and Energy Framework adopted by EU leaders in October 2014. The 2019 CAP is also inadequate to enable Ireland to comply with the provisional agreement on the revision of the renewable energy directive, endorsed on 27 June 2018 by EU ambassadors, under the Bulgarian Presidency.

7.1 Our Observations on Utilising Excessive Amounts of Onshore Wind as a Renewable Energy Source

It is relevant to point out that large-scale commercial wind farms (as opposed to dispersed small-scale renewable electricity producers) require significant upgrading and expansion of Ireland's electricity grid. Capital costs of expanding and developing the grid between 2011 and 2020 are predicted to amount to



approximately €4.5 billion together with maintenance costs of €4.0 billion. Of this amount, the per annum costs attributed solely to accommodating large wind farms amounts to €176 million per year from 2016 to 2020, while the operating costs of the expanded grid to cater for large-scale wind farms is predicted as amounting to approximately €15 million per year from 2016 to 2020.

It is our submission that adding more capacity for electricity generation by large-scale wind power is not a viable or sustainable solution, as it takes no account of problems which are arising to an increasing extent (despite the best efforts of Eirgrid and ESB Networks) as more and more wind power is fed into the national grid. It is our understanding that electricity suppliers are generally scheduled to supply a certain amount of electricity at a particular time, and the supplier is paid for this electricity at a price which fluctuates almost continuously throughout the 24-hour day. When this power is not required, the supplier is paid a constraint fee to compensate for the cost of starting up the plant.

Conventional electricity generating plants do not receive constraint payments when they are due to run at a particular time, but when their output is not required because of the additional amounts of wind-generated electricity. On such occasions, the conventional plant has to reduce output because electricity generated from wind gets a priority to dispatch onto the grid. On other occasions, when weather conditions allow a large amount of wind-generated electricity to be fed into the grid, it can be necessary to ask some of the wind turbines to shut down or reduce output. This curtailment, which is almost directly related to the percentage of wind generation capacity attached to the grid is a further cost to the consumer, as the wind farm is paid for the electricity not generated.

In contrast, we can point to Ireland's reasonably abundant solar energy, which can complement wind power, despite the fact that in Ireland the amount of solar irradiation per square metre of land surface is only slightly lower than in large areas of France, and very close to that in Germany. Solar energy is also more likely to be available when wind speeds are low, or when there is an absence of wind (see more comments on solar further down in this section).

We also wish to point out that one of the most appropriate policy solutions, being advocated by SEAI, is to increase the number of, and provide support for, community owned and operated wind farms, or single wind turbines constructed by groups of residents, small towns, villages or co-operatives. Approximately 50% of the wind energy in Denmark is generated by community-owned wind farms; and, in Ireland, a good example is provided by the Tipperary Energy Agency which has demonstrated an ability to enable people, communities and the public sector to become more sustainable in their energy use. In contrast to large-scale industrial wind farms, this Agency has identified a €500 million sustainable energy opportunity for County Tipperary and the Agency states that it is accelerating the "transition of Tipperary to a low carbon future".



As pointed out earlier in our submission, and as the Board will be aware, 99% of members of the Citizens' Assembly recommended that the State should enable, through legislation, the selling back into the grid of electricity from micro-generation by private citizens (for example energy from solar panels or wind turbines on people's homes or land) at a price which is at least equivalent to the wholesale price. If this recommendation were to be adopted, and especially if it were to be included in the NECP, Ireland would join the majority of EU member states which provide an economically justified feed-in tariff to micro-generators.

Also, 100% of the members of the Citizens' Assembly recommended that the State should act to ensure the greatest possible levels of community ownership in all future renewable energy projects by encouraging communities to develop their own projects and by requiring that developer-led projects make share offers to communities to encourage greater local involvement and ownership.

These recommendations are important because, even though they have not yet become Government policy, they are already leading to a change our approach to renewable energy policy. Given the examples from Germany and Denmark, and the recommendations of the Tipperary Energy Agency and the Citizens' Assembly, it is our submission that the current policy of favouring large-scale wind energy projects on land is already being changed.

Using a more appropriate mix of renewable energy sources was also clearly indicated by the Minister for Communications, Energy and Natural Resources, Mr Alex White, T.D., in his address to the conference on Ireland's Energy Transition, at Dublin Castle, as long ago as 03 June 2015, when he stated that:

"Onshore wind has so far been at the centre of Ireland's renewable energy generation. It has served us well, and it will continue to do so. But the next period of energy transition will also see the development of new commercial and late-stage solutions, which are likely to change the mix of renewables as technologies like solar, off-shore wind, and carbon capture and storage mature, and become more cost-effective".

That transition is already taking place, and it is our submission that the further development of on-shore wind energy should be restricted to locations where the wind power density is high, where the turbines can operate efficiently, and where there are no significant adverse impacts on wildlife, landscape quality or land uses.

Solar photovoltaic (PV) is also becoming competitive when compared with wind energy, though solar remains more expensive at present. However, the fall in electricity costs from solar photovoltaic projects since 2010 has been remarkable, with the weighted average levelised cost of electricity (LCOE) generated by utility scale solar PV falling by 73% since 2010, to around USD 0.10 / kWh for new projects commissioned in 2017. In some countries, an LCOE of USD 0.03 / kWh is possible from 2018 and beyond, given the right conditions. The principal



reasons for this steep fall in the costs of solar PV electricity have been the increasing efficiency of solar collectors, significant reductions in the cost of the solar collectors, and a 68% reduction in total installed costs between 2010 and 2017. Solar installations can now be built much more quickly than wind farms, and have much less visual and other impacts on the environment.

Looking ahead, the fall in the levelised cost of electricity (LCOE) from solar PV is much steeper than the fall in the cost of electricity from large-scale wind farms, leading to an increasing probability that solar will actually become cheaper than wind as a renewable source of electricity within the next decade.

As stated by the Minister for Communications, Energy and Natural Resources in 2015, Ireland's renewable energy policy will move towards a diverse and complementary mixture of renewable sources, away from the current emphasis on onshore wind. This will require a new policy approach, aimed at balancing the output from a variety of renewable resources.

7.2 Offshore Wind

A decade ago, offshore wind farms were considered unrealistic, difficult to construct and maintain, and therefore expensive. But in recent years, this picture has changed; offshore has become the new frontier for renewable energy, especially true for Ireland.

Information from Wind Europe Annual Offshore Statistics 2019 is that there are already 110 offshore wind farms off 12 European countries, and these include 5047 wind turbines, with a cumulative capacity of 22,072 MWatts. Ireland may be lagging behind this enormous growth in offshore wind farming, but will very soon catch up.³⁸

On Wednesday, 13 March 2019, the Irish Times reported that the development of offshore wind energy over the next decade would enable Ireland to *"embrace an electric future and decarbonise its heat transport and industry"*. *"Ireland had a real opportunity to make a change in delivering renewable capacity at the scale needed to meet its carbon reduction targets if we embrace our offshore wind potential"*.

On 24 March 2019, the Irish Times reported that a €31 million floating wind project off the west coast has been approved, consisting of a full-scale floating wind turbine to be deployed for testing at a Sustainable Energy Authority of Ireland (SEAI) site. The project is led by the European Marine Energy Centre working in partnership with SEAI and the engineering company Saipem. Funding has been secured from the EU Interreg North-west European programme, and the project

³⁸ Offshore Wind Europe – Key Trends and Statistics 2019. Published by Wind Europe, windeurope.org. We would commend this very informative report to An Bord Pleanála as a source of useful data on the offshore wind farming scene.



will demonstrate the survivability and cost competitive competitiveness of floating offshore wind.

By March 2021, a foreshore licence was being sought for preliminary survey work for an offshore wind farm off the Kerry and Clare coast. ESB and Equinor have applied for permission to allow site investigation for the proposed Moneypoint Offshore One Wind Farm and its grid connection. The first phase of the proposed two-stage development would be 16 kilometres from the Kerry and Clare coast.

On 24 March 2021, the Minister for Housing, Local Government and Heritage, Darragh O'Brien, TD, and his departmental colleagues, the Minister of State with responsibility for Local Government and Planning, Peter Burke, TD, and Minister of State for Heritage and Electoral Reform Malcolm Noonan, TD, welcomed the approval given at Cabinet for the National Marine Planning Framework, a step identified in the Interim Climate Actions 2021 for facilitating the development of offshore wind energy. The framework will be a key decision-making tool for Government departments, State agencies, regulatory authorities and policy makers for decisions on marine activities, including offshore wind.

The rapidly increasing importance of offshore wind energy is indicated by the multi-billion Euro Green Atlantic initiative announced by the ESB on 21 April this year, which will include the creation of a renewable energy hub on the site of the coal-fired Moneypoint Power Station.

There are four key elements to this important initiative:

- i) The first element is the transformation of Moneypoint into a green energy hub, and work has already started on the construction of a new €50m Sustainable System Support facility which will provide a range of electrical services to the electricity grid which would previously have been supplied by thermal fired power stations. This support facility is designed to enable higher volumes of renewable electricity from offshore wind farms to be connected to the national grid, while maintaining grid stability.
- ii) The second element is the creation of a floating off-shore wind farm of 1,400MWatts off the coast of Counties Clare and Kerry, which will be developed in two phases by ESB and joint venture partners, Equinor, a world leader in floating offshore wind technology. When complete, the wind farm will be capable of powering more than 1.6m homes in Ireland. Subject to the appropriate consents being granted, the wind farm is expected to be in production within the next decade.
- iii) The third element is the provision of a wind turbine construction hub, facilitating Moneypoint to become a centre for the construction and assembly of floating wind turbines.



- iv) The fourth element is the plan by ESB to develop a green hydrogen production, storage and generation facility at Moneypoint before the end of this decade. The facility, when operational, will produce a clean, zero-carbon fuel, namely, "green" hydrogen from renewable energy sources; and this may be used for power generation, heavy goods vehicles in the transport sector and to help decarbonise a wide range of industries such as pharmaceuticals, electronics and cement manufacturing.

The above announcement was very soon followed by proposals for a net-zero carbon emissions hub in the Cork region and a "critical infrastructure" project in the Corrib gas field off Co Mayo, to be submitted to the Government this week by the Irish Offshore Operators' Association (IOOA).

The two technical proposals outlined in the submission – made as part of the Government's consultation process on the Climate Action Plan 2021 – could "play a major role" in lowering emissions and decarbonising the State, while ensuring energy security, the IOOA suggested. The association, which said its submission was "*grounded in practical and pragmatic realism*", represents licence holders at the Barryroe oil and gas field off County Cork, Corrib operators Vermilion and Norwegian energy company Equinor, which is the ESB's partner on the planned Moneypoint wind farm project off Co Clare.

Its proposed Cork Net-Zero Emissions Hub envisages the use of carbon capture, utilisation and sequestration (CCUS) technology, as well as offshore wind energy and hydrogen production, to bring the regional economy to the point of net-zero emissions.

While the proposals do not immediately include offshore wind farming as a major component, the infrastructure to be provided would enable offshore wind farms to produce hydrogen, to be stored in offshore reservoirs deep underground.

As may be clearly seen from the brief selection of the above news items, onshore wind farming has been displaced by offshore wind farms which can produce electricity at a lower cost. According to Offshore Wind Europe – Key Trends and Statistics 2019, the "strike price" for offshore wind energy auction results in 2019 averaged €44 / MWh.

It is therefore our submission that granting planning permission for a large-scale onshore wind farm would be a retrograde step, giving rise to the possibility that the Coole Wind Farm could become a "stranded asset" before the end of its planned life; and we therefore suggest that the most appropriate solution would be for the Board to refuse permission.



7.3 Renewable Energy and Climate Policy

The Board should also take into account the fact that on 31 July 2020, the Supreme Court quashed the National Mitigation Plan, which could be described as the centrepiece of the Irish government's climate mitigation policy, because the Plan failed to specify the manner in which it was proposed to achieve the "national transition objective," as required under the 2015 Climate Act. The "national transition objective" is defined by the 2015 Act as a "transition to a low carbon, climate resilient, and environmentally sustainable economy" by 2050.

The Supreme Court's judgment has correctly been described by the UN Special Rapporteur on human rights and the environment, David R Boyd, as a "landmark decision." The case is one of a small number of high-profile "strategic" climate cases globally, in which the highest national court of a country has found that a government's climate mitigation policies do not comply with the law.

In December 2019, the Supreme Court of the Netherlands ruled that the Netherlands has a positive obligation under the ECHR to reduce its emissions by at least 25% by the end of 2020, compared to 1990 levels. Systemic climate cases are also working their way through the national courts in Norway, Switzerland, Belgium, France, Germany, Poland, the United States, Canada, Peru and South Korea. The Irish Supreme Court's judgment may offer lessons for these cases.

The Board will also be aware that the 2015 Climate Act will be very soon be replaced by a new Climate Act, based on the Climate Action and Low Carbon Development (Amendment) Bill 2021 (Bill 39 of 2021) which has very recently had its third reading in the Dáil.

Furthermore, the Joint Oireachtas Committee on Climate Action heard evidence on Tuesday, 4 May 2021, which will undoubtedly influence government policy on both renewable energy and climate; and it is our submission that the Board should examine, consider and take into account the evidence presented by witnesses at that committee hearing, especially the evidence of Dr Liam Lysaght, Professor Jane Stout and Mr. Pádraic Fogarty.³⁹

³⁹ https://www.oireachtas.ie/en/debates/debate/joint_committee_on_climate_action/2021-05-04/2/



8. THE VALUE OF PEATLANDS FOR CARBON CAPTURE; THE BENEFITS OF RE-WETTING AND RESTORATION

In their natural state, peatlands act as long-term sinks for atmospheric carbon dioxide, and a persistently high water table is necessary for this function. Peatlands are the most important long-term carbon store in the terrestrial biosphere; they sequester and store atmospheric carbon for thousands of years, and the peatlands in the northern hemisphere alone store approximately 450 billion tonnes of carbon.⁴⁰

Undisturbed peatlands accumulate carbon from the air at a rate of up to 0.7 tonnes per hectare per year; and the Wildlife Trust in Britain has estimated that a 2m deep peatland stores 8,000 tonnes of carbon per hectare. In Ireland, peatlands are estimated to store 1,085 Megatonnes (Mt) of carbon, i.e., 53% of all soil carbon stored in all of Ireland on just 16% of the country's land area.

The delicate balance between production and decay easily causes peatlands to become carbon sources following interference. A drop in the water table due to drainage, peat removal, burning and other human influences leads to significant releases of some greenhouse gases but conversely a decrease in others (e.g. methane). Between 1990 and 2000 up to 23 million tonnes of soil carbon has been lost from Irish peatlands, mainly due to industrial peat extraction. It is therefore vital to maintain an elevated water table on peatland habitats to prevent the large-scale release of these gases.

In Ireland the long-term carbon storage function of 47% of our original peatland area has been severely diminished through domestic and mechanical peat extraction. Because of the large emissions of CO₂ from degraded peatlands, re-wetting and restoring them is one of the most cost-effective ways of avoiding anthropogenic greenhouse gas emissions.

8.1 Carbon Dynamics in Intact and Degraded Peatlands

In a natural peatland system, the movement of greenhouse gases (methane and carbon dioxide) between the peatland and the air is complex. Although peatlands accumulate carbon over the long term, they both fix and emit carbon dioxide and release considerable amounts of methane, a by-product of anaerobic decomposition. Drainage of a peatland upsets the accumulation process and

⁴⁰ Most of the following information on rewetting and rehabilitation of worked peatlands, and the benefits of intact or rewetted bogs for climate change mitigation is taken by permission from a paper prepared by Jack O'Sullivan for Midlands Radio FM 103 in June 2020, and from the IPCC website.



leads to a vast increase in the amount of carbon dioxide released to the atmosphere from the peatland, a by-product of aerobic decomposition.

8.2 Climate Change Mitigation by Rehabilitation of Worked-out or Denuded Peatlands

The United Nations Inter-government Panel on Climate Change (IPCC) has identified the build-up of atmospheric greenhouse gases (GHGs) such as carbon dioxide, methane and nitrous oxide as threatening global climate stability. By 2100, the global climate is expected to warm by between 1.8 and 6.4°C; the impacts of climate change on natural ecosystems, biodiversity, human health and water resources are already being observed, are becoming more pronounced, and may be irreversible.

The Millennium Ecosystem Assessment 2005 predicted that by the end of the 21st Century, climate change would be the major cause of biodiversity loss; and this is clearly happening at an accelerated rate. The predicted increase in temperature and the changes in rainfall patterns, coupled with centuries of habitat loss, are likely to have a major impact on peatland ecosystems.

As peatland formation in Ireland is strongly linked to climate, any changes in the climate will have an adverse effect on our peatlands. The most recent years have been the warmest decade in the Irish climate record; and the global statistics provide clear evidence that climate change is accelerating:

- 17 of the 18 warmest years on record have been in this 21st century;
- Each of the last three decades has been successively warmer than any preceding decade since 1850;
- The period from 1983 to 2012 was the warmest 30-year period of the last 800 years in the Northern Hemisphere, and likely to be the warmest 30-year period of the last 1400 years;
- Since 1870, human activities have emitted some 2,145.5 GtCO₂-e;
- The carbon budget remaining is only 754.5 GtCO₂-e, if we want to limit human-induced warming to less than 2° C;
- We have used 74% of the maximum quota, leaving only 26%;
- At the current rate of emissions, that 26% will give us a little bit less than 18 years, i.e., until 2037; and,
- To stabilise warming, CO₂ and other GHG emissions will have to be reduced to zero; and, the faster this zero point is achieved, the lower the level at which global warming will stabilise; and there must be an equitable transition to zero emissions.

Analysis of the Irish meteorological monitoring network has shown that already the south and east of the country are experiencing drier summers, while the north



and west are experiencing wetter winters. As a result, changes are anticipated in the distribution of peatlands, with south-easterly sites most at risk initially. However, this may be counter-balanced by better conditions for peat accumulation further north, thanks to increased rainfall in winter.

As most peatland species are extreme habitat specialists they may be unable to adapt to the rapidly changing climatic conditions that are predicted. Further research is needed on the environmental requirements of each individual species so as to determine which species are likely to be most at risk. Unfortunately, at present, relatively little is known about the vulnerability of most of our bog plant and animal species to enable a more accurate assessment. A survey of 850 native plant species carried out by Dr Peter Wyse Jackson of the National Botanic Gardens of Ireland showed that 171 (20%) of Ireland's flora appears to be particularly vulnerable to climate change up to 2050. 34 of these vulnerable species occur on peatlands, including Fen Violet (*Viola persicifolia*), Bog Orchid (*Hammarbya paludosa*), Cloudberry (*Rubus chamaemorus*) and Marsh Saxifrage (*Saxifraga hirculus*).

Within the last couple of years there has been an increasing awareness that the exploitation of Irish peatland resources is not sustainable and is having major negative impacts on climate and biodiversity. It is now widely accepted that strict protection of intact peatlands is critical for the conservation of biodiversity and to maintain their carbon storage and sequestration capacity and associated ecosystem functions.

In addition, re-wetting, re-vegetating, rehabilitation and integrated management of damaged or cutover peatlands can generate multiple benefits including maintaining biodiversity and mitigating climate change, as well as combating land degradation.

A paper by Wilson, Farrell, Mueller, Hepp and Renou-Wilson⁴¹ demonstrates that rewetting of industrial cutaway peatlands offers a number of important benefits in terms of GHG exchange. The authors conclude that the re-establishment and, more importantly, maintenance of hydrological conditions characteristic of natural peatlands leads to a reduction in CO₂ emissions from the peat and to a potential carbon saving or avoided loss. Furthermore, the re-establishment of the carbon sequestration capacity of the peatland through re-colonisation by appropriate vegetation communities may further enhance carbon storage.

This three-year study highlighted the importance of long-term GHG monitoring in order to assess more accurately the capacity of peatland to sequester carbon. The advantages offered by climate on the west coast of Ireland (persistent rainfall, cool temperatures), coupled with an inherently nutrient-poor peat

⁴¹ Rewetted industrial cutaway peatlands in western Ireland: a prime location for climate change mitigation? D. Wilson, C. Farrell, C. Mueller, S. Hepp and F. Renou-Wilson; *Mires and Peat*, Volume 11 (2013), Article 01, 1–22, <http://www.mires-and-peat.net/>



substrate mean that rewetted industrial cutaway peatlands in this region could be a prime location for climate change mitigation.⁴²

We also point out that the Regional Planning Guidelines for the Midland Region 2010 – 2022, suggests a mixture of complementary uses and activities for worked-out or former industrial peatlands in the Midlands Region:

“to create new wetland based habitats on worked out peatlands and allied to this, provide a unique tourist product. There is also significant potential for the utilisation of peatland areas for educational and research purposes and to further develop a range of outdoor amenities”.

8.3 Re-wetted and Rehabilitated Bogs as Agents to Mitigate Climate Change

An Bord Pleanála will be aware that the report of the Joint Committee on Climate Action was published on 28 March 2019, and was officially launched on 16 April 2019.

The report calls for new legislation which would *“set ambitious climate and renewable electricity targets, and which will require five-year carbon budgets to be devised by a new Climate Action Council (which will supersede the existing Climate Change Advisory Council). The new legislation should provide a much stronger framework for the achievement of climate and energy targets and require all public bodies to make climate action a priority”.*

The Committee's report notes that:

“Peatland restoration was highlighted as a priority by the Citizens' Assembly. Currently only 1% of peatlands in Ireland are under rehabilitation or restoration. The potential for jobs through peatland restoration and rehabilitation projects has not been capitalised on despite being partially recognised by Government in the Action Plan for Jobs 2013 (action 306). The prime action of rehabilitation is rewetting, defined as ‘the deliberate action of raising the water table on drained soils to re-establish water saturated conditions which can stop continued release of GHGs from these peat bogs’ (JOCCA Report, Section 8.13, pages 74-75).

The Committee quoted from an EPA STRIDE report which confirmed that:

“damaged peatlands are a persistent source of carbon dioxide (CO₂) and, at the national level, Irish peatlands are a large net source of carbon,

⁴² State urged to 'rewet' 270,000ha of peatland under new proposals. Agriland. 05 March 2019. <https://www.agriland.ie/farming-news/state-urged-to-rewet-270000ha-of-peatland-under-new-proposals/>



estimated currently at around 2.64 Mt C/year. This figure of carbon equates to 9.68 Mt of CO₂"

The Committee also recommended a programme of substantial targeted investment into R&D, with priority being given to those areas with the highest mitigation potential, including, but not limited to, peatland restoration

In order to address the need for a just transition to a low or zero carbon economy in the Midlands, the Committee recommended that the Government should direct this programme **to begin as soon as possible in 2019** [our emphasis]:

*"The Midlands Regional Enterprise Plan (REP) Committee to devise a Midlands Just Transition Strategy, in order to sustain the economic and social fabric of the region in a post-peat-extraction era. The strategy should make provision for specific funding, to finance amongst other things, **a major project to rewet denuded peatlands in the Midlands.**"* (Section 2.6, item 2, page 19; and Appendix 5: Priority recommendations of the Joint Committee on Climate Action: Chapter 2: Supporting a Just Transition, item 6, page 109).

According to a very recent research report published by An Fóram Uisce,⁴³ in recent years, there has been a move towards more sustainable management of peatlands and restoration of degraded sites has been key to this. Restoration involves restoring abiotic and biotic conditions close to the original state, including the hydrological regime and surface topography followed by the reintroduction of peatland flora, such as *Sphagnum*. Studies have shown that raising the water table to, or near, the surface is sufficient to create suitable conditions to promote recolonization of vegetation, this being crucial to restoration.

Peatlands have been increasingly recognised as very valuable ecosystems and are highly significant for the global efforts to combat biodiversity loss, climate change, as well as contributing to most of the United Nations Sustainable Development Goals (SDG). Key recent developments have included the 2019 UN Environment Assembly resolution on *"Conservation and Sustainable Management of Peatlands"*, which acknowledges the contribution of peatlands in the implementation of the 2030 Agenda for Sustainable Development, while further impetus is provided by the United Nations Decade on Ecosystem Restoration (2021–2030).

There has been increasing pressure to rewet sites in Ireland following the publication of the Bogland report in 2011, which recommended that cutaway peatlands be restored where possible. This was later adopted by the National Parks and Wildlife Service in the National Peatland Strategy; and, in 2018, the National Planning Framework stated that the qualities of natural and cultural

⁴³ Optimising Water Quality Returns from Peatland Management while Delivering Co-Benefits for Climate and Biodiversity; Report produced for An Fóram Uisce, March 2021; 158 pp.



heritage, including peatlands, should be conserved and enhanced, and the NPF recommended that full restoration should be promoted over rehabilitation only.

Unfortunately, the Climate Action Plan 2019 (the deficiencies of which we have noted in the previous section above) failed to incorporate this recommendation, and instead suggested there should be a development of rehabilitation measures for exploited and degraded peatlands, and to restore/rewet designated sites only (Special Areas of Conservation and Natural Heritage Areas).

Rewetting peatlands has been identified as an important management technique to improve water quality, reduce greenhouse gas emissions, improve carbon sequestration, and promote biodiversity. Peatlands can easily be rewetted by blocking drainage ditches or installing bunds, which raises and stabilises the water table and increases water retention. This alteration of peatland hydrology is essential for the reestablishment of 'peat building' vegetation such as *Sphagnum*, and for reduced organic matter decomposition, which in turn allows the peatland to revert back to a carbon sink.

Raising the water table enables recolonization and spread of *Sphagnum* for an Atlantic cutaway blanket bog, but this is more efficient when remnants of the original bog and, therefore, a source of propagules remained within the production area. The 'natural' recolonization of peatland vegetation can take some time, and for severely degraded peatlands, restoration can involve the reseedling or transplanting of essential peatland species following rewetting, including the reintroduction of bryophytes.

It is our submission that the proposal to construct a wind farm on the subject site is completely opposed to the policy of rewetting, restoring and re-vegetating denuded peatlands, and therefore the wind farm project as a whole should not therefore be permitted by An Bord Pleanála.

It is our further submission that the task of restoring the bogs on the subject side, together with the restoration of all of the denuded boglands in the surrounding area of North Westmeath, including re-planting or transplanting with *Sphagnum* and other peatland plants, would be an extremely positive project, combining much-needed employment, biodiversity restoration, and climate benefit. Such a project would be most likely to be welcomed by local communities, in contrast to the almost universal opposition to the proposed wind farm.



9. THE APPLICANT'S NATURA IMPACT STATEMENT AND THE RESPONSIBILITY OF AN BORD PLEANÁLA

In an earlier part of this submission we have noted that the applicant's Natura Impact Statement (NIS) is incomplete in that it fails to recognise or take account of the on-going peat excavation on and around the subject site, and has not adequately considered the in-combination effects of this activity together with the effects of the construction and operation of the proposed wind farm.

In section 7.1.2 of the NIS, which lists other planning applications in the vicinity of the proposed wind farm site, there is a brief mention of "peat operations", including references to the applications for substitute consent by Westland horticulture; but no further indication that the effects of this continued peat extraction have been considered.

Section 7.2.1 of the NIS lists other projects which have been considered in the cumulative assessment, including a very brief mention of the existing peat extraction activity (page 106); but no further examination of possible cumulative is provided.

The routes of the underground cable connection, and the transportation route to the wind farm site of large components of wind turbines, are described in the NIS, but it is unclear how much disruption will be caused to the environment by the required road works. The final route of the grid connection is also unclear, as it will depend on the requirements of Eirgrid.

9.1 The Purpose of a Natura Impact Statement; the Board's Obligations

As a result of many cases taken in the High Court against the Board in relation to Appropriate Assessment, the Board will be aware that if there is any element of doubt or risk to the integrity of one or more Natura 2000 sites, or to any of the habitats or species for which one or more sites have been selected, or to these sites' conservation objectives, consent cannot be given by the Competent Authority.

If doubt exists, i.e., if it cannot be proved on the basis of the best scientific information, that the proposed wind farm development will not have any significant adverse effect on a Natura 2000 site (SAC or SPA), planning permission should not be granted.

This strict requirement is clearly stated in Article 6 of the EU Habitats Directive 92/43/EEC, especially in Articles 6(3) and 6(4) which set out the procedural and substantive safeguards governing plans and projects likely to have a significant effect on a Natura 2000 site.



The provisions of Article 6 have been transposed into Irish national law by the European Communities (Birds and Natural Habitats) Regulations 2011 (S.I. No. 477 of 2011), which clarify the State's responsibilities to comply with EU Directives on nature conservation, and which also address transposition failures identified in judgements of the European Court of Justice.

The 2011 Regulations define the legal responsibilities and powers of local authorities and An Bord Pleanála under the Planning and Development Acts to ensure that the requirements of the Birds and Habitats Directives are strictly observed in the adoption of development plans and the granting of development consents. All other statutory authorities must adhere to the provisions of the new Birds and Habitats Regulations in their planning, consent and operational functions. In addition, general obligations are placed on all public authorities to exercise their functions to secure compliance with the Birds and Habitats Directives and to uphold and enforce the requirements of the Regulations.

These Regulations, and the Planning and Development (Amendment) Act 2010, require planning authorities, when considering plans or projects that are likely to have a significant effect on an SAC or SPA, to ensure that an **appropriate assessment screening** is undertaken; and, where required, a **Natura Impact Statement** must be produced, followed by a full **appropriate assessment** of the implications of the plan or project for the conservation status of the site.

Sites may contain priority or non-priority habitats and species. The only justifications for damaging a qualifying "priority" site are *"considerations relating to human health and public safety, to beneficial consequences of primary importance of the environment, or further to an opinion from the European Commission, to other imperative reasons of overriding public interest"* (IROPI), but this can be allowed only after an assessment is made in line with the Article 6 procedure, and there are no other alternatives, and an agreement is reached with the European Commission.

The Planning and Development Act, 2000, as amended by the insertion of Part XAB (inserted by the Planning and Development (Amendment) Act, 2010), contains significant provisions requiring the relevant competent authority to undertake an appropriate assessment. Part XAB is lengthy, and for the purpose of this submission, the most relevant sections are as follows.

Section 177U is the section of the amended Act which addresses screening for appropriate assessment:

"(1) A screening for appropriate assessment of a draft land use plan or application for consent for proposed development shall be carried out by the competent authority to assess, in view of best scientific knowledge, if that land use plan or proposed development, individually or in combination with another plan



or project is likely to have a significant effect on the European site [our emphasis].

"(2) A competent authority shall carry out a screening for appropriate assessment under subsection (1) before —

- (a) a land use plan is made including, where appropriate, before a decision on appeal in relation to a draft strategic development zone is made; or,***
- (b) consent for a proposed development is given".***

"(4) The competent authority shall determine that an appropriate assessment of a draft land use plan or a proposed development, as the case may be, is required if it cannot be excluded, on the basis of objective information, that the draft land use plan or proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site" [our emphasis].

"(5) The competent authority shall determine that an appropriate assessment of a draft land use plan or a proposed development, as the case may be, is not required if it can be excluded, on the basis of objective information, that the proposed development, individually or in combination with other plans or projects, will have a significant effect on a European site" [our emphasis].

Section 177S (2) defines "competent authority" as "the planning authority to whom an application for permission is made or the Board [An Bord Pleanála], as the case may be."

The relationship between the granting or with-holding of planning consent and the result of an appropriate assessment carried out by the competent authority under Article 6.3 of the Habitats Directive is clarified by sections 117V (1) and 117V (2), and these sections of the Act are well known to the Board.

This legislation transposes into Irish planning law the principles of Article 6 of the EU Habitats Directive 92/43/EEC, which also applies to Directive 79/409/EEC on the conservation of wild birds.

In brief, screening for Appropriate Assessment must be carried out by the competent authority, which in this case is An Bord Pleanála; and, if the Board is **not completely satisfied** [our emphasis] that the proposed wind farm development (in combination with any other plans and projects) would have no adverse impact on the integrity of a European site, the Board must then carry out an Appropriate Assessment, taking into account the applicant's Natura Impact Statement and any other relevant information. If the results of the Appropriate



Assessment do not allow the Board to be **completely satisfied on the basis of scientific evidence** [our emphasis] that the proposed wind farm development (in combination with any other plans and projects) would have no adverse impact on the integrity of a European site, the Board must refuse permission.

These obligations of the competent authority, in this case, the Board, are further explained in *Kelly -v- An Bord Pleanála [2014] IEHC 400* (25 July 2014) and in the CJEU Case C-258/11. The threshold which the planning application must then pass is set out in paragraph 44 of the Judgment of the Court in CJEU Case 258/11 (11 April 2013):

"So far as concerns the assessment carried out under Article 6(3) of the Habitats Directive, it should be pointed out that it cannot have lacunae and must contain complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned."

This is a strict standard and An Bord Pleanála does not have legal jurisdiction to give permission if it is not met.

10. HUMAN HEALTH IMPACTS

The Board will undoubtedly be aware that there has been an on-going debate about the effects of wind turbines on human health – not only because of shadow flicker, but because of low frequency noise emitted by the large industrial-scale wind farms – and this is an issue not adequately addressed in the applicant's EIAR.

The debate on the wind farming advocates' side argues that "*sound from wind turbines does not pose a risk of... any adverse health effect in humans*"; while, on the other side, there have been many claims for symptoms including impairment of mental health, sleep deprivation, and other adverse effects. While many claims of adverse effects are anecdotal, sleep disturbance is one of the issues most frequently reported, and claims are supported by detailed studies.

10.1 Turbine Noise and Sleep Deprivation

There is ample evidence illustrating that adequate sleep is necessary for maintaining good health, and disturbed sleep can affect immediate and long-term health. Night-time noise has the potential to adversely affect sleep, which has been recognised by the World Health Organisation and reflected by their publication of night time-noise limits. The Environmental Noise Directive (2002/49/EC) recognises that community noise is potentially harmful and so requires that all EU member states map the noise exposure of their populations.



Despite this, wind turbines are often erected in quiet rural areas, where sleep disturbance due to wind turbine noise is reported more frequently

Physiological measurements indicate that nights with low frequency band amplitude modulation impacted sleep the most. In particular, amplitude modulation and the presence of beating were important constituents of the wind turbine noise contributing to sleep disruption.⁴⁴

In addition to the above results from peer-reviewed research undertaken in Sweden, a recent paper by Prof. Alun Evans, Centre for Public Health, Queen's University Belfast, provides the following relevant conclusions:⁴⁵

"All the available evidence indicates that an important minority of local inhabitants is severely impacted by noise emitted by wind farms sited too close to their homes. This degree of collateral damage is too large to accept in terms of utilitarianism. Public health must exercise the Precautionary Principle and retain as much independence from government as possible in assessing the health effects of national policies. The health and human rights of rural-dwelling citizens are every bit as important as those of the rest of society. In fact, in terms of wind energy, the overall benefit is fairly modest and the adverse effect on people's health is far from small. It is essential that separation distances between human habitation and wind turbines are increased. There is an international consensus emerging for a separation distance of 2 km; indeed some countries are opting for 3 km and more. Furthermore, the appropriate, focused studies should be undertaken as soon as possible".

It is our observation that further research will yield additional papers supporting the growing awareness among doctors, scientists and other professionals who are concerned about the adverse health effects of low frequency noise from wind turbines.

10.2 Wind Turbine Noise – Infrasound

Research work carried out by **Mariana Alves-Pereira** (School of Economic Sciences and Organizations (ECEO), Lusófona University, Lisbon, Portugal) shows that wind turbines create Infrasound and Low Frequency Noise (ILFN). This is correlated in an article by 4 scientists in The Irish Engineers Journal, January 2018. Most noise levels are in the frequency range of 200Hz to 2000Hz.

⁴⁴ Michael G. Smith, Mikael Ögren, Pontus Thorsson, Eja Pedersen and Kerstin Persson Waye, 2016. Physiological effects of wind turbine noise on sleep. Proceedings of the 22nd International Congress on Acoustics, Buenos Aires, 05 to 09 September, 2016; Paper ICA2016-440. The authors of this paper are from the University of Gothenburg, Sweden; Chalmers University of Technology Sweden, and Lund University, Sweden.

⁴⁵ Evans, A. (2017) Environmental Noise Pollution: Has Public Health Become too Utilitarian? Open Journal of Social Sciences, 5, 80-109.



A noise below 20Hz and 70 Decibels cannot be heard by humans and therefore is discounted. This stems from the 1920s and 30s when noise started being recorded from industry and technology was not available to record these lower limits. The research shows that Tonal components at 10Hz and below are not steady in amplitude and the pressure is not continuous and varies so that those in the vicinity are exposed concomitantly.

Technical Appendix 1, Section 2 3.2, states that:

"The assessment of tonal, low frequency and amplitude modulation characteristics require specific measurement techniques".

This leads to the method of measuring Amplitude Modulation or infrasound where it states that:

"The input signal (a time series of band-limited (50-800 Hz), A-weighted, 1/3-octave Leq data in 100 millisecond samples) is split into blocks of 10 seconds."

This recommended methodology clearly shows that the noise measurements are not made at frequencies below 50Hz, which is where the infrasound noises and variations of amplitude become evident.

It is therefore our submission that the Board should not consider granting planning permission without an assurance from the applicant that infrasound and Low Frequency Noise have been considered, and could demonstrate that this important component of wind turbine noise would not have an adverse effect on human health. If these assurances are not received by the Board, a refusal of permission would be appropriate.

10.3 Shadow Flicker

Shadow flicker has been defined as the effect caused when rotating turbine blades periodically cast shadows through constrained openings such as windows of neighbouring properties. This can result in a number of ailments, and can contribute to the adverse health effects which have been reported in the vicinity of wind farms.

Even though the applicant's EIAR rules out the possibility of major effects of shadow flicker on nearby dwellings and their inhabitants, the data is unclear; and it is our submission that the Board should be in a position to assure itself (if necessary by obtaining independent advice) that shadow flicker will not affect the residential amenity or health of people living locally. If there is any doubt, planning permission should be refused.



11. OTHER SPECIFIC CONCERNS ABOUT THE APPLICANT'S PROPOSED WIND FARM AND CONNECTION TO THE NATIONAL GRID

11.1 Proposed Route of the Underground Cable Connection

Even though the applicant's EIAR has provided a route map for the underground cable grid connection, there is no indication of any pipes for water or electricity shown in any of these maps.

The Board should be aware that every property along the route from Lower Coole through Coole and to Multyfarnham has a separate septic tank. None of these septic tanks or indeed the mains water pipes or the ESB services is marked on any maps, including water pipes that landowners may have laid from one side of the road to the other for the use of farm animals.

It is our submission that the maps and drawings are only indicative, and that the applicant does not know precisely where or how the grid connection will be constructed on particular extents of its proposed route. Traffic disturbance, and inconvenience to other road users, especially to farmers, has not been fully described.

It is therefore our submission that the Board should refuse permission for the proposed wind farm on account of the lack of clarity, lack of detail and the degree of uncertainty concerning the grid connection route and how the grid connection cable will be installed.

11.2 Conflict with Tourism Objectives for North Westmeath

The Board may not be aware that North Westmeath is becoming coming a key tourist destination in the midlands of Ireland. Important tourist attractions include Tullyally Castle, the Hill and Forest of Mullaghmeen, the Hill of Uisneach, and the archaeology of the surrounding area.

It appears that the applicant has not taken into consideration any of these important economic activities which could be detrimentally affected by the proposed windfarm.



12. CONCLUSION

This planning applications is the latest in the series of applications by the same applicant, Coole Wind Farm Ltd, for an industrial-scale wind farm on the subject site. The previous applications must be considered as unsuccessful, even though the applicant frequently refers to the "*permitted wind farm*"; this is incorrect, as the decision made by An Bord Pleanála to grant permission remains to be determined by the High Court.

There are many problems with this proposed windfarm; if it were to be permitted, it would be a large industrial-scale wind farm on an unsuitable low-lying site, from which peat has been extracted for a long time and will continue to be extracted in the future, given that the commercial companies removing the peat have sought retrospective consent to continue their activities. These companies have been operating without planning permission or an EPA license, and their activities are therefore unauthorised.

The proposed windfarm, if permitted, would be intimately connected with this unauthorised removal of peat. Not only would the subject site be shared between peat extraction and the construction and operation of the windfarm, but the wind farm is totally dependent on the peat drainage and road building undertaken to enable peat to be extracted.

In our submission we have identified gaps and inaccuracies in the applicants' EIAR and NIS, such that it would be difficult, if not impossible, for the Board to grant permission. Such permission cannot be granted except on the basis of "*complete, precise and definitive findings and conclusions capable of removing all reasonable scientific doubt as to the effects of the works proposed on the protected site concerned*", i.e., a definitive conclusion of no effects on any Natura 2000 site.

Jack O'Sullivan

On behalf of

The North Westmeath Turbine Action Group

16 May 2021